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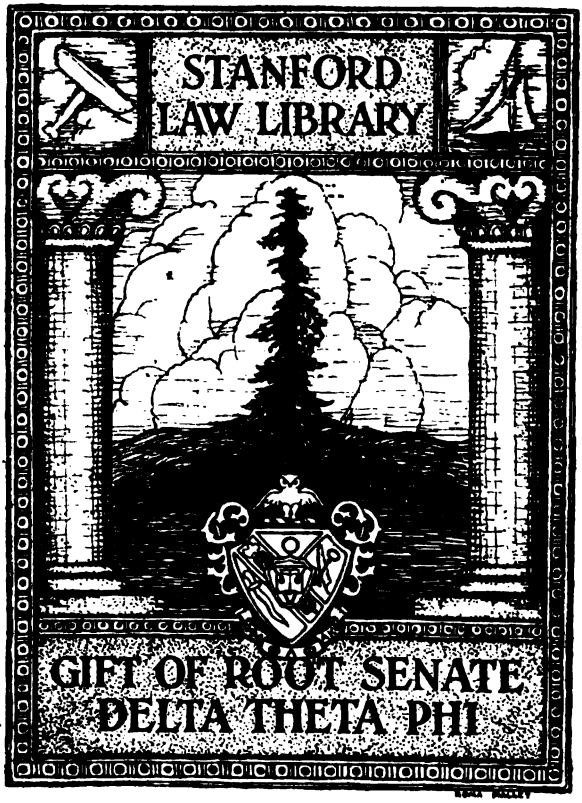
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WRECK INQUIRIES.

WRECK INQUIRIES.

THE

LAW AND PRACTICE

RELATING TO

FORMAL INVESTIGATIONS

IN THE

UNITED KINGDOM, BRITISH POSSESSIONS

AND BEFORE

NAVAL COURTS

INTO SHIPPING CASUALTIES

AND THE

INCOMPETENCY AND MISCONDUCT OF SHIPS' OFFICERS.

WITH AN INTRODUCTION

BY WALTER MURTON,

SOLICITOR TO THE BOARD OF TRADE.

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PREFACE.

THE work here attempted, represents in an expanded form a task undertaken some years ago in order to facilitate a branch of my official duties, and for any opinions expressed upon the matters dealt with, I am alone responsible.

It was suspended, upon the passing of the Shipping Casualties Investigations Act, 1879 (by which a right of appeal was for the first time conferred in certain cases) in order to add a record of the appeals heard under the new provisions. That the need of some connected statement of the law and practice of Wreck Inquiries, has been really felt, may be inferred from the remarks of two learned judges which are quoted at page 56. The enlargement of jurisdiction, and the appointment of a Wreck Commissioner, under the Merchant Shipping Act, 1876, the greater formality in the procedure due to the provisions of that Act, and the wider scope of the questions submitted to Courts of Inquiry thereafter, have all tended, in common with other causes, to increase the importance of these Inquiries, to make them more complete and exhaustive, and to give them a higher public interest.

A glance at the questions which have been submitted to the Courts of Formal Investigation in the United Kingdom (see Alphabetical List, page 557) will attest the scope and variety of the matters which come under discussion in connection with shipping casualties.

There has also been a large increase in the number of Inquiries, the average down to the year 1872 not having exceeded 37 per annum, while in the year 1883 there were no less than 256 Wreck Inquiries ordered in the United Kingdom, in addition to 72 Inquiries into incompetency or misconduct.

The general scheme of the book has not been free from difficulty. While public attention here is chiefly confined to casualties investigated in the United Kingdom, the British shipmaster finds himself amenable to the jurisdiction of Courts of Inquiry all over the world. If his ship has met with a casualty, or if his conduct has been such as to challenge inquiry, he may either be compelled to defend himself at home before a Court of Formal Investigation, or a Local Marine Board, or abroad, before a Naval Court, or before a Court of Inquiry in India, or one of our numerous colonies. In many of these cases when the certificate of a ship's officer has been in question, an appeal lies to the Admiralty Division of the High Court in England, or to the Courts having Admiralty jurisdiction in Scotland and Ireland. The number of Inquiries held in the British Possessions abroad and by Naval Courts, in

the year 1882-3, amounted to 213. However desirable it might therefore have been to limit the scope of the book to Inquiries at home, it would undoubtedly have impaired its completeness.

The several kinds of Inquiry, or Investigation, have accordingly been described, and, by way of obviating the "multitude of references" spoken of by Mr. Justice Mellor, it has been sought, even at the cost of a good deal of repetition, to give as complete an account as possible of each separate system by itself; more especially as some of the tribunals abroad are wholly composed of laymen, and are held at places where there is no opportunity of referring to the Merchant Shipping Acts.

On similar grounds the contents of the Appendix have been amplified, to the inconvenience, it may be feared, of those who may use the book in the United Kingdom. They may, for instance, regret the addition of so many Colonial enactments. On the other hand, by grouping these together, and by presenting them in one view with the Imperial enactments, materials may perhaps be afforded for assimilating, as far as possible, the different systems, and thus some degree of uniformity in procedure may ultimately be promoted. In any case, it may be useful to have at hand an account of the various statutory provisions by which the status of British shipmasters and officers may be affected in different parts of the world.

The whole has been prefaced with a slight sketch of the origin and history of Wreck Inquiries by way of introduction to the Legislation now in force, and with a view to direct attention to the object of such Inquiries as originally designed.

Among the contents of the Appendix may be mentioned a statement of the law relating to the grant of Certificates of Competency and Service, including those which may be held by skippers and second hands of fishing boats under the recent Merchant Shipping (Fishing Boats) Act, 1883. There will also be found some short reports of typical cases investigated, and an alphabetical list of the issues raised in Formal Investigations in the form of questions for the opinion of the Court.

Advantage has also been taken of the recent preparation of a set of Forms for the guidance of Naval Courts, to insert them in the Appendix, with notes referring to the pages of the book where the subject is dealt with in the text.

These pages were in print before the publication of Mr. Chamberlain's recent proposals for sweeping changes in the constitution and procedure of Courts of Inquiry, but in the coming discussion of a new measure this work may not be wholly useless as an exposition of the existing law. An appreciable interval is also possible in these days between the contemplation and the fruition of fresh legislation. It seems, therefore,

on the whole, desirable not to delay publication of the work, especially as the proposals themselves afford evidence that under some form of procedure Wreck Inquiries have taken a permanent place among the institutions of the country.

I have largely profited by materials placed at my disposal by Sir T. H. Farrer and Mr. Thomas Gray, whose experience and special knowledge of the Mercantile Marine embrace a period of more than thirty years. Mr. Monkhouse, of the Board of Trade, has also given me much friendly help.

I desire at the same time to acknowledge the great assistance I have received from Mr. Danckwerts, who perused the manuscripts, and supplied many authorities.

In the preparation of the Index, and in the revision of the proof sheets throughout, Mr. Gough, of my Department, has afforded valuable and laborious service.

W. M.

January, 1884.

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PART I.

INTRODUCTION.

PART I.

INTRODUCTION.

THE subject of these pages is the system of Inquiries into Shipping Casualties, and into the competency and conduct of officers of the Mercantile Marine. That system owes its origin to the resolutions of a Select Committee appointed by the House of Commons in the year 1836, to inquire into the causes of the shipwrecks, which at that time had by their increasing frequency aroused public attention and concern.

Origin of the system of Inquiries.

Select Committee of 1836.

The Committee, after a full Inquiry, and as the result of the evidence before them, recommended, among other measures for diminishing the large loss of life and property annually occurring at sea, "the arrangement of a plan for the institution of Courts of Inquiry to examine into the causes of any shipwreck that should occur, as far as might be practicable, with power to pronounce a verdict of censure on the owners or commanders of all those vessels where the result of the Inquiry should establish the fact of such wreck being occasioned by any fault or deficiency on the part of either, as well as to acquit honorably the owners and commanders of those ships against whom no fault could be proved, and to make the evidence and verdict in each case public in every port of the Kingdom; with further power to suspend, for a given time, the licenses or certificates of such officers and seamen as should be proved guilty of gross incompetency or gross neglect of duty; and to reward, either by reimbursement of their loss of wages and effects, or by gratuities, or medals of honour and distinction, those officers and men who should have particularly distinguished themselves by their skill, courage, or humanity, in preserving the lives and property of others, whether actually belonging to the ships that were wrecked, or coming

The Committee recommended:

The institution of Courts of Inquiry into Shipwrecks.

With power to pronounce censure on owners or commanders.

To publish the proceedings in each case.

To suspend licenses or certificates in cases of gross incompetency or gross neglect of duty.

And to reward skill, courage, and humanity in saving life and property.

to their assistance from other vessels, or from the shore."

Principal causes of shipwreck stated.

In treating of the principal causes of shipwreck, the Committee stated :—

"That among the various causes of shipwreck, which appear susceptible of removal or diminution, the following appear to be the most frequent, and the most generally admitted :

"1. Defective construction of ships.
"2. Inadequacy of equipment.
"3. Imperfect state of repair.
"4. Improper or excessive loading.
"5. Inappropriateness of form.
"6. Incompetency of master and officers.
"7. Drunkenness of officers and men.
"8. Operation of Marine Insurance.
"9. Want of harbours of refuge.
"10. Imperfection of charts."

The Committee further reported as follows :—

Causes of the admitted incompetency of masters and officers.

"That the frequent incompetency of masters and officers appears to be admitted on all hands, this incompetency sometimes arising from the want of skill and knowledge in seamanship, but more frequently from the want of an adequate knowledge of navigation, it being proved that some masters of merchant vessels have been appointed to command after having been for a very short time at sea; that others have hardly known how to trace a ship's course on the chart, or how to ascertain the latitude by a meridian altitude of the sun; that many are unacquainted with the use of the chronometer, and that very few indeed are competent to ascertain the longitude by lunar observations, while some are appointed to command merchant vessels at periods of such extreme youth (one instance is given of a boy of fourteen, all of whose apprentices were older than himself), and others so wholly destitute of maritime experience (another instance being given of a porter from a shipowner's warehouse who was made a captain of one of his ships) that vessels have been met with at sea which were out of their reckoning by several hundreds of miles, and others have been wrecked on coasts from which they believed themselves to have been hundreds of miles distant at the time."

"That drunkenness, either in the masters, officers, or men, is a frequent cause of ships being wrecked, leading often to improper and contradictory orders and directions on the part of the officers; sleeping on the look-out, or at the helm, among the men, occasioning ships to run foul of each other at night, and one or both foundering; to vessels being taken aback or overpowered by sudden squalls, and sinking, upsetting, or getting dismasted, for want of timely vigilance in preparing for the danger; and to the steering wrong courses so as to run upon dangers which might have otherwise been avoided." Drunkenness.

"That the practice of taking large quantities of ardent spirits as part of the stores of ships, whether in the Navy or in the Merchant Service, and the habitual use of such spirits, even when diluted with water, and in what is ordinarily considered the moderate quantity served to each man at sea, is itself a very frequent cause of the loss of ships and crews. Ships frequently taking fire from the drawing off of spirits, which are always kept under hold; crews frequently getting access to the spirit casks, and becoming intoxicated, and almost all the cases of insubordination, insolence, disobedience of orders, and refusal to do duty, as well as the confinements and punishments enforced as correctives, both of which must for the time greatly lessen the efficiency of the crews, being clearly traceable to the intoxicating influence of the spirits used by the officers and men."

To guard against the incompetency of masters and mates above described, the Committee recommended:—

"The formation of certain standards of qualification in seamanship and navigation, to be attained by officers before they should receive licenses of appointment to particular grades in the Merchant Service; and certain higher standards of qualification in seamanship, navigation, and nautical astronomy, to be attained by masters before they should be entitled to receive licenses of appointment to the command of vessels of different classes and for different voyages." Further recommendations, viz.: Certain standards of qualification in seamanship to entitle officers to licenses to particular grades, and certain higher standards of qualification for masters of different classes of vessels.

The report also urged—

"The appointment of examiners in seamanship, navigation, and nautical astronomy, for the public Appointment of examiners and power to

grant licenses to officers of superior skill and knowledge.

examination of all candidates for appointment as officers or commanders, with power to remand all who should be deficient in the requisite degree of knowledge for the class to which the candidate might aspire, and with a power also to grant licenses to officers of superior skill and knowledge."

Select Committee of 1839 as to timber ships.

In 1839 the House of Commons appointed a Select Committee whose inquiry was limited to shipwrecks of timber ships and the loss of life attendant thereon, but produced evidence of a most distressing character, and led to recommendations for the restriction of deck-loading on board timber-laden vessels from North America.

Select Committee of 1843 as to Shipwrecks.

In 1843, the House of Commons thought fit to appoint a third Select Committee to inquire into the shipwreck of British vessels. Their Report recommended with respect to Inquiries into the losses of ships, that an Investigation should take place into the conduct of the masters and crews of all Merchant vessels that should be lost. It contained the following passage:—

"Your Committee have examined many witnesses on the propriety of investigating the conduct of the masters, mates, and crews of ships lost, and most of the witnesses are favourable to such investigation; and the Committee therefore recommend that an Inquiry into the causes of the loss of ships should on all occasions take place."

Object of Courts of Inquiry as recommended by the Committee of 1836.

It thus appears that the object of the Courts of Inquiry as stated by the Committee of 1836 was threefold:

1. To examine into the causes of shipwreck;

2. On the one hand to censure owners or commanders of vessels to whose default or deficiency the Courts might attribute any casualty, and further to suspend for a time the licenses and certificates of officers and seamen who should be proved guilty of gross incompetency or gross neglect of duty; and, on the other hand, to acquit honourably owners and commanders not found in default, and further to reward officers and men who should particularly distinguish themselves by their skill, courage, or humanity, in preserving life and property, whether on board their own ships or by giving assistance to wrecked vessels from their own ships or from the shore;

3. To produce a salutary preventive effect by making the evidence and verdict in each case public in every part of the kingdom.

Object of Courts of Inquiry.

The Committee of 1843 endorsed in more concise terms the principal recommendations of the Committee of 1836.

In all cases therefore, while the main object of the Inquiry was declared to be to ascertain the cause of the shipwreck, the conduct of masters, officers and seamen was to be the subject of investigation, and the publication of the evidence and verdict in each case was enjoined. It may be reasonably presumed that the object of this publicity was not only to hold out a warning to owners and commanders of vessels, but to stimulate and suggest the exercise of preventive measures for the avoidance of future casualties. It is not unimportant to bear in mind these several heads of Inquiry (a). The Committee of 1843 did not in terms, like the Committee of 1836, direct attention to the conduct of the owners of vessels, but as a matter of fact it has always been more or less kept in view by the Courts of Inquiry constituted by the Legislature as an element for consideration in investigating the causes of loss of life and property at sea.

Conduct of owners also considered.

The value and fruits of the labours of the two Committees of 1836 and 1843 are evident from the legislative effect which has been from time to time given to their recommendations. It is interesting to observe how closely the Legislature has followed the lines they laid down.

Legislative results of the proceedings of the Committees of 1836 and 1843.

PAST LEGISLATION FOUNDED UPON THE RECOMMENDATIONS OF THE COMMITTEES OF 1836 AND 1843, AND NOW REPEALED.

The following brief review of past legislation is introduced in order to elucidate the growth of the existing system of Inquiries. Although these Acts are now repealed, their enactments have been remodelled and extended, rather than abolished or superseded in principle. They are not uninstructive, as their influence is traceable in the legislation of the present day.

(a) See post, pp. 19 to 26.

9 & 10 Vict., c. 100.

In the year 1846, the Act of 9 and 10 Vict., c. 100, was passed to regulate the construction of steam vessels, to make provision for preventing as far as possible accidents in steam navigation, and for requiring sea-going vessels to carry boats. By sections 19 and 20, it was enacted that serious accidents to, or the apprehended total loss of steamers, should be reported to the Board of Trade, and in regard to such accidents powers were given to the Board to appoint Inspectors to inquire into and to report upon them. These provisions were repealed by the Steam Navigation Act, 1851 (14 and 15 Vict., c. 79), but were in substance re-enacted by sections 29, 30, 31, 32 and 33 of that Act, by which the powers of the Inspectors and the machinery for conducting the Inquiries were more fully defined. They were in fact similar to the powers of special Inspectors under the 15th section of the existing Merchant Shipping Act, 1854.

Serious accidents to or supposed total loss of steamers, to be reported to Board of Trade.

Board of Trade to appoint special inspectors to inquire and report.

Repeated complaints of the incompetency of masters and mates.

During the period succeeding the Reports of the Committees of 1836 and 1843, and down to the year 1850, complaints of incompetency on the part of masters and mates, and of want of discipline amongst seamen continued to be made ([a]), and an attempt to remedy these evils was made in 1850. The Mercantile Marine Act of that year provided that the Board of Trade should undertake the general superintendence of matters relating to the Mercantile Marine, and should be authorized to carry into execution that Act, and to enforce by legal proceedings the laws relating to the Merchant Service. The 17th section gave the Board of Trade power to increase its staff for that purpose, thus, in effect, leading to the constitution of the Marine Department of the Board of Trade.

13 & 14 Vict., c. 93.

New duties and powers of the Board of Trade.

Origin of the Marine Department of the Board of Trade.

Constitution of Local Marine Boards.

Provision was also made for the constitution of Local Marine Boards at various seaports, for carrying into effect the provisions of the Act, under the superintendence of the Board of Trade.

Examination of masters and mates of Foreign going ships.

In substitution for the then existing system under which the Trinity House and other local authorities ([b]) had granted certificates to persons submitting themselves voluntarily for examination, the Board of Trade

([a]) Parliamentary Reports, 913. 1847-8.
([b]) See Appendix, page 382 (*n*).

and certain of these Local Marine Boards under their direction, were to examine the masters and mates of foreign-going ships according to a general plan, to be determined by the Board of Trade. Certificates of Competency as masters or mates were to be granted to those who should pass a satisfactory examination, and give evidence of good conduct. But to provide for the cases of persons who had been at sea for many years, to whom a compulsory examination would have been unjust, certificates called "Certificates of Service," of equal validity and effect, some of which are still in force, were to be given without examination to persons who, before the 1st January, 1851, were already masters or mates in the Merchant Service, or had attained a certain rank in the service of Her Majesty or the East India Company, and in certain cases Certificates of Competency might be granted by the Board of Trade (a). At the passing of the Act of 1850, 2,610 persons possessed old Trinity House certificates, which were exchanged by all but 540 for the new Board of Trade certificates.

13 & 14 Vict., c. 93.

Certificates of competency to be granted by the Board of Trade.

Certificates of service.

The new Certificates of Competency or Service of masters and mates to be thus granted by the Board of Trade, were placed under their control, and power was given to the Board to cancel or suspend them under certain circumstances. The provisions for these purposes, set forth in section 28 of the Act, contained the germ and origin of the existing system of Inquiries before a Local Marine Board (b) into the incompetency or misconduct of masters and mates, and, taken in connection with the provisions in section 104, were the foundation of the Formal Investigations into Shipping Casualties in the United Kingdom (c).

Power for the Board of Trade in certain circumstances to cancel or suspend certificates.

Origin of Inquiries before Local Marine Boards.

Formal Investigations into Shipping casualties.

The enactments in section 28 were as follows:—

Language of sec. 28.

"That if any master or mate is convicted of a misdemeanor under this Act, or is superseded by the order of a Naval Court constituted as hereinafter mentioned, the 'Board of Trade' may thereupon cancel or suspend his certificate, whether of competency or service; and if the 'Board of Trade' or any Local Marine Board has reason to believe that

The Board of Trade might cancel or suspend certificates after convictions for misdemeanor, or on supersession by a Naval Court

(a) See Appendix, page 382 (*n*).
(b) See post, page 130.
(c) See post, page 41.

18 & 14 Vict., c. 93.

Investigation into incompetency or misconduct before a Local Marine Board, &c.

any master or mate is from incompetency or misconduct unfit to discharge his duties, such Board may either institute an Investigation, or, if expedient, the 'Board of Trade' may direct the Local Marine Board at or nearest to the place at which it may be convenient for the parties and witnesses to attend, to institute the same; and thereupon such persons as the 'Board of Trade' may appoint for the purpose, or, as the case may be, the Local Marine Board, shall, with the assistance of a local Stipendiary Magistrate (if any), and if there is no such Magistrate, of a competent legal assistant to be appointed by the 'Board of Trade,' conduct the Investigation, and may summon the master or mate to appear, and shall give him full opportunity of making a defence, either in person or otherwise, and may exercise any of the powers of procuring evidence hereinafter given to special Inspectors appointed by the 'Board of Trade,' and shall on the conclusion of the Investigation make a report upon the case to the 'Board of Trade;' and if such report is to the effect that such master or mate is, either from incompetency, or from habitual drunkenness, or from tyrannical habits, unfit to discharge his duties, the 'Board of Trade' may cancel or suspend his certificate, whether of competency or service; and every master or mate whose certificate is cancelled or suspended shall thereupon deliver it to the 'Board of Trade,' or, as it may direct; and such Board may at any subsequent time grant a fresh certificate to any person whose certificate has been cancelled, and it may pay the expense of any such Investigation as aforesaid, and may pay to such Magistrate or legal assistant as aforesaid, such remuneration as it may deem fit. Provided always that no person interested in any ship shall take part in any Investigation relating thereto, or to the conduct or competency of any master or mate thereof."

Master or mate to have full opportunity of making a defence.

The Court to have the powers of Special Inspectors; and to report to the Board of Trade.

Power for the Board of Trade to cancel or suspend certificates of masters and mates found incompetent or guilty of habitual drunkenness or tyrannical habits.

Other provisions.

Proviso that no person interested in the ship should take part in investigation.

Under the above provisions the entire procedure in the Inquiries as well as the jurisdiction to cancel or suspend the certificates was virtually placed under the control and direction of the Board of Trade, and these further points are noticeable:—

Control and jurisdiction of the Board of Trade.

Noticeable points.

1. That full opportunity was to be given to the implicated officer of making a defence either in person or otherwise.

1. Full opportunity to officer of making a defence.

2. That no person interested in any ship was to take any part in any Investigation relating thereto, or to the conduct or competency of any master or mate thereof.

13 & 14 Vict., c. 93.
2. No person interested in a ship to take part in the Investigation.

The first of these provisions was not extended in subsequent Merchant Shipping Acts to Inquiries into shipping casualties (except by Naval Courts), until it was expressly enacted in regard to such casualties by the Merchant Shipping Act, 1876, probably in consequence of the recommendations of the Royal Commission on unseaworthy ships. In the succeeding part of this work it will appear that the policy of the Legislature has subsequently been gradually to divest the Board of Trade of its merely judicial powers, and transfer them to a wholly independent tribunal (a). The Administrative or Departmental authority of the Board has, however, been fully preserved, and they have retained the prerogative of mercy in regard to cancelled or suspended certificates, and also the power to deal with the certificates of masters and mates who have been convicted of any offence.

The Legislature has gradually divested the Board of Trade of judicial functions.

But their authority in other respects has been preserved.

As a necessary complement to the above provisions it was further enacted (section 30) that no "Foreign-going" ship (as defined by the Act) should proceed to sea unless the master and the first and second mates or the only mate (as the case might be) engaged for the voyage, should possess valid Certificates of Competency or Service. These certificates might, under section 5 of the Mercantile Marine Act Amendment Act, 1851, be either of a grade appropriate to the stations held by such masters or mates for the time being, or of any superior grade.

No Foreign-going ship to proceed to sea without duly qualified master and mates or mate.

The Act further contained many provisions as to the engagement and discipline of, and the proper food and medicine for seamen, which have been extended and explained by subsequent legislation. Those provisions are not sufficiently connected with the purpose of the present work to require further notice.

Other provisions.

Shipping casualties were dealt with by the 104th section, under which, in cases of supposed serious accident occasioning loss of life or property, or the loss of, or material damage to any ship, or of gross neg-

Power for the Board of Trade to order Investigations.

(a) See post, pp. 20, 21 and 22.

13 & 14 Vict., c. 93.

lect of or disobedience to the laws relating to merchant ships or merchant sailors, the Board of Trade might appoint the local examiners [of masters and mates] or any other proper person or persons as special Inspector or Inspectors to inquire into and to report thereupon, and necessary powers were conferred upon the persons so authorized to inspect any ship "not detaining her from proceeding on her voyage," and for the general conduct of the Investigations.

These repealed enactments were the foundation of the present system of Formal Investigations.

These enactments, now repealed, were with the provisions of section 28 before mentioned, the foundation of the present system of Formal Investigations as conducted under the more ample powers contained in subsequent Acts of Parliament. The powers of inspection or survey and detention of unseaworthy ships afterwards conferred may properly be considered an amplification of the same provisions.

Survey and detention of ships.

Language of section 104.

The exact language of section 104 is as follows:—

"And be it enacted, that whenever the 'Board of Trade' has reason to apprehend that any serious accident occasioning loss of life or property has been sustained or caused by, or has happened on board of any 'ship,' or that any 'ship' has been lost or has received material damage, or that any of the provisions of this Act or of any other Act relating to merchant 'ships' or 'merchant sailors' are so grossly neglected or disobeyed as to require special investigation, it may appoint the local examiners or any other proper person or persons as special Inspector or Inspectors to inquire into and to report thereupon; and every person so authorized may at all reasonable times, upon producing his authority (if required) go on board and inspect any 'ship' the inspection of which appears to him requisite for the purpose of the Investigation, and every part thereof, not detaining the 'ship' from proceeding on her voyage, and enter and inspect any premises the entry or inspection of which appears to him requisite for the same purpose, and may make such inquiries in the matter as he may think fit."

Naval Courts.

The Act also provided a system of Investigation by means of Naval Courts (a) for hearing complaints

(a) See account of the existing system of Inquiries before Naval Courts, post, page 158.

against masters and seamen (including mates) on the high seas and abroad made to a Naval or Consular officer by the master or any certificated mate, or by one-third or more of the "seamen" in any ship, or by her consignee. These Courts were invested with power to supersede the master of the ship and appoint another in his stead if the Court unanimously decided that this was absolutely required for the safety of the ship or crew, or the interests of the owner.

13 & 14 Vict., c. 93.

The Mercantile Marine Act Amendment Act, 1851, by section 4, conferred upon the Board of Trade increased powers of cancelling or suspending the certificates of masters or mates convicted of felony, or of an offence on board ship under the General Merchant Seamen's Act, 1844, or the Mercantile Marine Act, 1850, or if the report of an Investigation under section 28 of the latter Act was to the effect that a master or mate had been guilty of gross dishonesty, drunkenness, or tyranny.

14 & 15 Vict., c. 96.

Increased powers of the Board of Trade.

By sections 23 and 24 of the Mercantile Marine Act Amendment Act, 1851, the powers of the Naval Courts were extended. By section 26 power was given to them to investigate the cause of any wreck or abandonment of any merchant ship abroad, and if the report of the Court was to the effect that the wreck or abandonment had been caused by the misconduct or incompetency of the master or any certificated mate, the Board of Trade might cancel or suspend his certificate, whether of competency or service.

Naval Courts empowered to investigate the cause of any wreck or abandonment of any merchant ship abroad.

Various amendments of the law relating to the regulation of steam navigation, and to the boats and lights to be carried by sea-going vessels, were made by the Steam Navigation Act, 1851 (14 & 15 Vict., c. 79), before referred to (*). That Act contained provisions for ensuring the periodical survey of steam vessels; and the limitation of the number of passengers to be carried therein; for regulating the build of iron steamers; and the placing of a safety-valve upon each boiler, out of the control of the engineer; for prescribing the boats and other equipments to be provided for sea-going vessels, and the lights to be

14 & 15 Vict., c. 79.

Various amendments of the law.

(*) See *ante*, page 6.

carried, and other provisions to be made for guarding against accidents from collision.

Legislation of 1854.

Previous Acts repealed by 17 & 18 Vict., c. 120.

Pre-existing provisions consolidated and amended by 17 & 18 Vict., c. 104.

In the session of 1854, two Acts of great importance were passed. By one of them—the Merchant Shipping Repeal Act, 1854 (17 & 18 Vict., c. 120)—the whole of the legislation reviewed above was repealed. By the other Act—the Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104)—the pre-existing provisions were consolidated and elaborately amended. The latter Act, though amended by subsequent statutes ([a]), to all of which full reference will be made, contains the principal provisions now in force upon the subject of Inquiries into Wrecks.

Early Inquiries into Shipping Casualties.

A short account of the earlier Inquiries conducted under the provisions of the repealed statutes will tend to elucidate the general subject, and may be of some interest.

Early Inquiries into wrecks of steamships, 9 & 10 Vict., c. 100.

Those Inquiries related wholly to steamships, and were conducted under the provisions contained in the Steam Navigation Act, 1846, 9 & 10 Vict., c. 100 ([b]), by which, as we have seen, it was enacted that serious accidents to, or the apprehended total loss of steamers should be reported to the Board of Trade, and powers were conferred upon the Board to appoint Inspectors to inquire into and report upon such accidents or apprehended losses.

The Act came into operation on the 1st January, 1847, and out of nineteen cases reported to the Board of Trade in that year, nine were formally inquired into ([c]). One of the earliest Inquiries was conducted by Captain Denham, R.N., F.R.S., into the wreck of the steamship *Sirius*, off Ballycotton Point, County Cork, on the 16th January, 1847, and his report ([d]) throws light upon the objects which were kept in view in these Inquiries immediately after the new legislation was put in force. Captain Denham fully reviewed the circumstances attending the casualty, and concluded his report by expressly bringing for-

Inquiry into wreck of steamship *Sirius*.

Report of the Inspector thereon.

([a]) See account of the existing provisions, post, page 56.
([b]) See *ante*, page 6.
([c]) Parliamentary Return, 695, 8th April, 1851.
([d]) Parliamentary Return, 696, 8th August, 1851.

ward in furtherance, as he stated, of the instructions given to him by the Board of Trade, "matter which the accident suggested and the evidence supported." The matter referred to included practical suggestions for the establishment of lighthouses and lights at localities indicated; for lessening speed in case of fog; for stopping to heave the lead at frequent intervals when approaching land or shoals; for a certain equipment of boats; for ascertaining the local attraction and deviation of ships' compasses; and the like. Other suggestions for future guidance and precaution were also made by the Inspector.

The *Sirius*.

Practical suggestions for the avoidance of future casualties.

It appears from the report that the press and the public were not admitted to attend the Inquiry, though no instructions to that effect had been given by the Board of Trade. This is the earliest report on record, and it is to be noted that the instructions which the Inspector received from the Board of Trade required him to recount the lessons of warning and of practical suggestion for the future to which the facts of the particular casualty might give rise.

On another occasion, Captain Denham was appointed by the Board of Trade to investigate the circumstances connected with the loss of the *Tribune*, screw steamer, on the coast of Wexford, in October, 1847, on a voyage from London to Dublin. The vessel was built of iron, and it having been alleged that the disaster was solely due to an error in the compasses, Captain Denham reported [a] "that it arose from the occasional, but most uncertain operations of the local attraction and disturbing influence to which the compass needle is liable on board iron screw vessels, particularly if not corrected by the most careful and elaborate tests."

The *Tribune*.

Finding.

The report further stated as follows:—

"Such precautions are of vital importance, and require the exercise of Government regulation to the effect that approved and authorised persons shall alone adjust and certify so vital an adjunct to safety of life and property. * * * * I have added to the grave consideration of this subject by relating how the Astronomer Royal, whom I had the privilege of attending, undertook in person to adjust the first iron ship that

Suggestions.

[a] Parliamentary Return 696, 8th August, 1851.

The *Tribune*.

went to sea in 1838, so intricate a solution of practical science was it esteemed; and as each vessel is totally different from another in this respect and [they] are multiplying, a reference to officially recognised science and experience is suggested."

Although the loss of the *Tribune* was not attributable to the charts on board, considerable stress was laid upon the circumstance that the vessel was not provided with authorised Admiralty charts, but that the master used such as he found the vessel furnished with, at four times the cost, without any guarantee of accuracy. Upon this subject Captain Denham reported—"That such perverseness required legislative enactment, making it unlawful to use any charts not stamped at the Hydrographical Office of the Admiralty."

The *Finn McCoull*.

Several other cases were investigated by Captain Denham subsequently to the year 1847. Among these was that of the *Finn McCoull*, a steamship, which was lost in Tuscar Sound, on the coast of Ireland, in June, 1848. The subject of charts was again under discussion at the Inquiry, and after reviewing the circumstances of the casualty Captain Denham reported (*) as follows:—

Finding.

"It does appear that the loss of the said steam vessel is to be attributed to the absence of a correct and authorised chart on board; and to avert the like

Suggestions.

accidents in future, your Lordships' Inspector recommends that all steam vessels (for which the Act in question is intended) be required to be provided with Admiralty charts of the latest possible date, of at least the particular route for which they clear out; such charts are not only the necessarily correct ones, but are to be obtained for one-fourth of the price of the unauthorised ones. And as it is equally, if not more essential, that sailing vessels should be so provided, seeing that in proportion as they cannot repeat their voyages so rapidly, their pilot knowledge is not so readily attained, it suggests the application of such a regulation as would render it illegal for any British vessel to proceed to sea without such charts, or a certificate from the Hydrographer of the Admiralty, that no official chart exists for such and

(*) Parliamentary Return 696, 8th August, 1851.

such a portion of the intended voyage. It is submitted indeed, whether it might not be desirable to enact that no chart shall be sold or bought that is not under the Hydrographical Office seal, to the intent of giving provisional character to those charts emanating from private compilation, where the Admiralty surveys have not yet extended; and effectually checking the dissemination of privately compiled charts of regions and localities actually anticipated by such official surveys and publications as 'Admiralty Charts and Sailing Directions.'" * * * * "This case may [also] go to strengthen a suggestion that all steam vessels be required to carry one or more pilots for the coast their traffic route embraces, until the master and chief mate shall be found by examination to be competent to act as their own pilot."

The Finn McCoull.

Another instructive case which formed the subject of a most exhaustive Inquiry, was that of the steamship *Orion*, lost off Portpatrick, Mull of Galway, in June, 1850, when about fifty persons were drowned. This vessel had been employed as a passenger and general cargo vessel between Liverpool and Glasgow. She had been on that station for three years, and was held in such estimation as a first-class coasting steamer, that although fitted to carry 108 cabin passengers, she was frequently resorted to by many more than could be berthed, and on the occasion of the voyage when she was lost, there were at least 173 passengers on board. After elaborately explaining the construction and equipments, and stating in much detail the circumstances which led to the casualty, Captain Denham (*) reported as follows:—

The Orion.

"It is clear that the second mate, John Williams, was by his obstinate reliance on his own judgment, and when warned of his danger not attending to it, nor when under the very glare of a lighthouse, acting with presence of mind and common caution, the direct cause of the *Orion's* wreck. And as the master, Thomas Henderson, left her in charge of a mate without stipulating that the ship's course should not be altered without consulting him, and that too when the ship would be for the next two hours ranging

Finding.

(*) Parliamentary Return 696, 8th August, 1851.

The *Orion*.

along the most critical part of her voyage; with no accredited pilot on deck, but merely desiring the mate 'to call him if the weather should become thick,' tacitly approving the course then steering, and with reliance on any subsequent course the mate might think proper to adopt, he, the master, was indirectly the cause of the wreck of the *Orion*. And inasmuch as the boats of the *Orion* were not available to succour the people on board through want of anticipating regulations to secure order and prompt service in the hour of needing the boats, so did further blame attach to the master; and, as respects the defection of boat service, blame also extends to the chief mate, George Langlands."

Subsequent prosecution for neglect of duty, and culpable homicide.

"Such was the conclusion of the law authorities of Scotland on the face of the depositions, and with reference to the palpable facts, that the master, first mate, and second mate, were forthwith committed for trial on charges of neglect of duty and culpable homicide (*)."

Suggestions.

And under the title of "suggestions," Captain Denham further reported as follows:—

"The *Orion's* case suggests (for averting the like disaster) the following official regulations, viz.:—

"1st. That all coasting steam packets should carry a certified pilot for the coast their traffic line embraces, so that, when the master has occasion to leave the deck, the ship's safety would not devolve on a subordinate, exercising both pilot discretion and the accustomed authority of officer of the watch, in the same person. The skill required in the former, and the absolute power attaching to the latter office, may exist in one person, but should never be combined as duties. In the case before us it is certain that had the master or chief mate been on deck, viewing [the second mate] John Williams as the pilot, or so viewing him, had a second or third mate been on deck in charge of the watch, either of them would in their priority of responsibility have stepped between him and his rashness and saved the ship; but, as it was, he was absolute, and all that the third mate could do was to warn him; taking the helm would have been construed into mutiny; rushing to the

(*) See post, page 95, and Appendix, page 340.

captain would have given mortal offence (if nothing happened after all) even though his interference averted the destruction. In a word, the pilotage of a ship is only ensured when under the eye of greater responsibility. The *Orion*.

"2ndly. The boats of all passenger vessels should occasionally be inspected by a Custom House Officer or a Board of Trade Surveyor, in order to ensure the number and size of them as prescribed by law, and that they are in good condition, properly equipped, and easily lowered to the water, and that the master had stationed the mates and crews to the best advantage amongst his boats for their separate constant care and efficient service on emergency, each boat to have a distinguishing number painted on her bows.

"3rdly. That the master be required to see that his boats are uncovered, their gear in place, and all clear for immediate use at sunset when out of harbour.

* * * *

"5thly. That the berthing tickets given to passengers shall conspicuously denote also the number of the particular boat to which the bearer of such ticket must resort in the event of being ordered by the commander to take to the boats, and that such a notice be exhibited in each berth. By such a distribution of order and forethought among the passengers, and systematic manning of the boats by the crew, the suicidal confusion I have had to recount from time to time as having prevailed when packets are wrecked, may at least be mitigated, if not averted. Certainly no man is nearer being perished because reminded of contingencies attending his position.

"6thly. All passenger vessels should carry one life-buoy to every three passengers she is constructed to carry, and every deck cushion and mattress should be stuffed with cocoanut fibre or cork shavings. The life-buoys ought to be distributed in lockers fore and aft on the upper deck, with loose covers, so that they may float out as the ship foundered.

"It may urge these suggestions into adoption, if I state that it is not the *Orion's* case alone that has started a consideration of them; such will be found in a code of regulations, thirty-three in number, which I was moved to submit to my Lords in 1848 as arising from my investigations of the cases of the steamers

The *Sirius*, &c.

Sirius, Finn McCoull, Tribune, Great Contest, Senator, Prince of Wales, Royal Victoria, Queen of Scotland, Flambeau, Vanguard, Minerva, Viceroy, Border Queen, &c."

Captain Denham also made an elaborate reference to the circumstances of the Portpatrick light, and explained various suggestions for its improvement, and he further called special attention to the very inadequate lifeboat accommodation at Portpatrick and to the entire absence of any "night look-out, or watchman, whether of Customs, Coast Guard, or Harbour Master, or pilot on any routine of duty at the port."

The *Dumbarton Castle*.

Another Inquiry by Captain Denham into the circumstances attending the wreck of the *Dumbarton Castle*, with loss of life in August, 1850, illustrated strongly the necessity both for a closer supervision of steamships, and for more comprehensive legislation in regard to them.

The following startling facts were reported by the Inspector:—

"The steamer was totally disabled whilst attempting an open sea trip with between fifty and sixty passengers on board; first, by the working of her hull tearing the starboard injection pipe from her side, and causing a leak which the engineer could not staunch, nor the pumping and baling means keep under, so that the boiler fires were drowned; secondly, that when bearing up for the nearest land and steerage way was of vital consequence the vessel was found to be deficient in every sea-going requisite. She had but one small unfitted jib, scarcely a bucket to bale with, no sounding lead-lines, and so slender a topmast that it could not sustain a flag of distress, in which condition it took her five hours to drift nine miles, all which time the leak was so gaining on the baling exertions of the passengers with every utensil they could avail of, even to the compass boxes, that when the vessel struck the strand her upper deck was under water. In this critical situation, with a flowing tide, it was found that the only boat on board would carry but eight people." The Inspector further reports that "the master proceeded to sea on a coasting voyage of sixty miles, forty-five of which lay along a most exposed and shelterless

seaboard without a sail ready to set, a lead-line to sound with, a gun to enforce a signal, nor a compass that could be steered by, the pilot having had to borrow one on the eve of starting."

The *Dumbarton Castle.*

The report contained the following suggestions :—

Suggestions.

"Presuming that the accident in question would under surveillance have been averted, and adverting to the fact of there being several hundred steamers employed at our ports similarly situated, I submit with all deference that the case is suggestive of a more extended and systematic supervision of our mercantile steam fleet of 1,100 vessels than the present Acts provide for; and that in any future arrangements to that effect no steamer of the Mercantile Navy should be exempted; and that the powers and duties of the official local surveyors should, under a general superintendent, extend to the inspection of the vessel and her regulation equipment, at any time it may appear desirable, as well as at certain fixed periods; and that in licensing vessels as to their number of passengers, it should be determined according to capabilities of vessel, and efficiency of equipment, master and crew, whether she might go beyond the harbour or river mouth or not."

In connection with the same subject, Captain Denham had already in February, 1850, presented to the Board of Trade a report on the "Systematic Supervision of Steamers," which may be usefully referred to ([a]). It contained the following passage :—

Suggestions in reports on Inquiries for amending legislation.

"In the eighteen reports which I have had the honour to present to their Lordships, upwards of forty-four suggestions for averting ascertained causes of disaster have arisen, and whereon I anticipate that the Right Hon. President, Mr. Labouchere, will see additional reason to remodel the existing Acts."

Captain Denham further stated that he had "gathered such information as might strengthen the application for an amended Steam Navigation Act, whereby our mercantile steam fleet of 1,008 vessels, exclusive of 102 mail steamers, shall be as essentially superintended as our railroads are."

Various preventive measures were then recom-

([a]) Parliamentary Return 696, 8th August, 1851.

Code of Regulations.

mended, including the adoption of an international system of lights for steamers and sailing vessels.

It is interesting to notice that Captain Denham, in submitting to the Board of Trade the Code of Regulations, "thirty-three in number," prepared by him in 1848, and mentioned in his report upon the *Orion* Inquiry, described those regulations as a "list of the points which official inspection of steam vessel accidents had developed, and whereon the Board might deem it advisable to promote further regulations for the safety of life and property at sea." The Code of Regulations bore the following heading: "Amendments to the Steam Navigation Act, 9 and 10 Vict., c. 100, as suggested by the Official Investigations of steam vessel accidents, of Captain Denham, R.N., F.R.S., between February, 1847, and October, 1848." Not only therefore do the suggestions above referred to afford a practical proof of the object of the investigations into shipping casualties as understood at the time of their institution, but the knowledge thus acquired is distinctly traceable in the subsequent legislative enactments of 1850, 1851, and 1854.

Object of Inquiries exemplified.

Legislation consequent thereon.

Inquiries under the Mercantile Marine Act, 1850.

The Mercantile Marine Act, 1850, extended the powers of investigation to the case of sailing ships, while preserving to the Board of Trade the entire control over the proceedings. Without entering into detail on the subject of the Inquiries held under that Act, now repealed, it may be stated that the reports of the Inquiries were all directed to the same practical ends, and prove the efforts of the Board of Trade to trace the causes of shipwrecks with a view to the prevention as far as possible of future casualties.

Change in Tribunals Introduced by the Merchant Shipping Act, 1854.

Greater formality in the procedure.

Result in regard to the powers of the Board of Trade.

By the Merchant Shipping Act, 1854, a greater degree of formality was introduced into the procedure (a) by which means, and by the substitution of Stipendiary Magistrates and Justices of the Peace, as the presiding authority, in place of appointees of the Board of Trade, it was reduced to a system more in harmony with the general institutions of the

(a) See section 433 of 17 and 18 Vict., c. 104, post, page 57.

country. This was a distinct step towards the independence of the tribunal for dealing with Inquiries into wrecks. It is true that by Section 241 of the Act of 1854, the Board of Trade had still in some cases the power to appoint a special tribunal for the investigation of alleged incompetency or misconduct of masters and mates (which might of course arise in connection with the loss of ships), and they also retained their power of inquiry in certain cases by an inspector appointed by them under section 14 of the same Act [a], but practically Inquiries into wrecks were committed to magistrates, and Inquiries into incompetency or misconduct, not causing wrecks, to the Local Marine Boards [b].

Change in Tribunals.

The Investigations conducted under the Merchant Shipping Act, 1854, continued to aim at the same general objects as those above noticed in connection with the Inquiries under the earlier statutes.

Consideration of Inquiries by the Select Committee of 1860, and the Royal Commission on Unseaworthy Ships of 1873.

In following out the history of Inquiries into shipwrecks, it is necessary to mention that the subject has twice been formally investigated since 1854, viz.: 1st, by the Select Committee of the House of Commons appointed in the year 1860, at the instance of the late Mr. W. S. Lindsay, to inquire into the state of Merchant Shipping, and the operation of, among others, the Merchant Shipping Act, 1854; and 2ndly, by the Royal Commission on Unseaworthy Ships, appointed in the year 1873.

Select Committee of 1860.

The Select Committee of 1860 devoted considerable attention to the system of holding Inquiries, and several of the witnesses made complaints of the mode in which they were conducted, and of the constitution of the tribunals. Those complaints were, however, met by rebutting evidence, both generally, and in the particular instances which were brought forward.

System of Inquiries examined; complaints of witnesses on the subject.

(a) See post, page 39.
(b) Report and Evidence of Select Committee on Merchant Shipping, 1860, pp. 540 and 541.

Misapprehension as to the primary object of Inquiry.

The primary object of the Inquiries was adverted to in the evidence. In examining Sir T. H. Farrer, the Permanent Secretary of the Board of Trade, upon the subject, the Chairman, Mr. Milner Gibson, stated that there had been some misapprehension upon this point, and that the Inquiries were not undertaken with the intention of instituting a prosecution against anyone, but with a view to ascertain the cause of loss for public information and benefit ([a]). Sir T. H. Farrer emphatically assented to that view, declaring that the Board of Trade had always contended that the punishment of an offending master or mate was a secondary or incidental object, their chief care being to inquire into the cause of the loss with the view of ascertaining whether anything could be done to prevent such losses taking place in future ([b]).

Sir T. H. Farrer advocated the transfer of power of punishment from the Board of Trade to the tribunal of Inquiry.

Evidence was also laid before the Committee by Sir T. H. Farrer of the advantage which might arise if the tribunal conducting the Inquiry, instead of the Board of Trade, were to pass the sentence upon the master or mate, the Board of Trade having power to mitigate or remit the punishment.

Report by Committee of 1860 as to the results of the legislation since 1835 and the intervention of the Board of Trade.

It may fairly be said that the more or less experimental legislation between the years 1835 and 1860, had on the whole been judicious and beneficial. The Committee of 1860 reported in express terms to that effect, declaring that from a public point of view, as regarded the protection of life and property, the intervention of the Board of Trade had had a salutary effect, and had been sanctioned by public opinion. But the Committee stated, on the other hand, their opinion that "as the law had by very exceptional legislation armed the Board of Trade with power to institute Inquiries into wrecks and casualties upon the decision of which depended not only the question of culpability of the parties implicated, but practically also the liability of the shipowner, it became of the highest importance for the due administration of justice to all parties that those Inquiries should be conducted with the strictest impartiality; and that the official weight and influence of a powerful public Board should not be brought to bear unduly against any

([a]) Report and Evidence of Select Committee of 1860, p. 536.
([b]) *Ibid.*

person implicated, and this especially should be avoided in cases where claimants have a deep interest in fixing criminality upon the commanders of the vessel" [a].

Changes introduced by the Merchant Shipping Act Amendment Act, 1862.

The suggestion of Sir T. H. Farrer that the tribunal investigating a case should, instead of the Board of Trade, inflict punishment upon masters and mates, was carried into effect by the Merchant Shipping Act Amendment Act, 1862, the provisions of which will be hereafter noticed [b].

The powers of the tribunals were also extended by the same Act to the cancellation or suspension of the certificates of engineers [c], and power was given to the Board of Trade to remit or lessen punishment [d].

Another provision of this Act prescribes the service upon the certificated officers of a ship, of a copy of the report or a statement of the case upon which the Investigation is ordered [e], thereby putting them on notice of the subject-matter of the Inquiry.

Royal Commission of 1873.

In the year 1873, a Royal Commission was appointed to make inquiry with regard to the alleged unseaworthiness of British registered ships, to inquire into the system of Marine Insurance, the state of the law as to the liability of shipowners for injury to those whom they employ, and the alleged practice of undermanning ships, and to suggest amendments in the law. The Commissioners investigated in detail the whole system of conducting Inquiries into wrecks. The evidence ranged over a wide field, but it is only necessary for the present purpose to make a brief reference to it. The Commissioners issued two elaborate reports as the results of their labours, and upon this particular subject of Inquiries into wrecks they made numerous recommendations, some of which have been carried into effect by the Merchant Shipping Act, 1876, and the Shipping Casualties Investigations Act, 1879 [f].

Complaints of witnesses as to Inquiries.

Complaints were freely levelled by numerous witnesses against the then existing mode of conducting

(a) Report of the Select Committee of 1860, pp. xvi. and xvii.
(b) 25 & 26 Vict., c. 63, s. 23, sub-sec. 1, see post, page 60.
(c) *Ibid*, sub-sec. 2.
(d) *Ibid*, sub-sec. 4.
(e) *Ibid*, sub-sec. 6.
(f) See practical results of reports of Royal Commission, post, page 25.

the Inquiries. The Commissioners themselves reported that the "tribunal did not command public confidence, the mode of procedure was said to be dilatory and expensive, the power of the Court was ill-defined, and in some cases could not be enforced."

Object of Inquiries.

The principal aim of the Inquiries was again declared to be the discovery of the cause of loss in order to obtain lessons for future safeguards. Sir T. H. Farrer re-asserted this principle, stating that in the opinion of the Board of Trade the question of "guilty or not guilty" ought in these Inquiries to be subordinate to the question "what was the cause of the loss"(a). Mr. F. J. Hamel, the Solicitor of Customs, by whom the Inquiries had been conducted for twenty years, emphatically declared the same thing. His evidence was as follows:—

"If there is one thing more than another that I have impressed upon every gentleman in my department during the twenty years that I have had the conduct of these cases, it has been this, that he is never to go into Court as a prosecutor at all, that he is merely to go into Court for the purpose of getting out the facts, with no animus whatever against anybody"(b).

At the same time, as has been seen, the importance of investigating the competency and conduct of ships' officers so far as they bear upon the results of an Inquiry, and of awarding punishment, if necessary, was urged by the Select Committee of 1836, and has been recognized throughout the subsequent legislation.

Reports of the Royal Commissioners on the subject of Inquiries.

The Royal Commissioners themselves having in their preliminary report said that the Inquiries had suggested improvements, contributed to the greater safety of navigation, and had been beneficial to shipowners and seamen, in their final recommendations strongly endorsed the above views in the following terms:—

"It is a matter of public interest with a view

(a) Report and Evidence of the Royal Commission on Unseaworthy Ships, vol. II., 1874, p. 50. The evidence given before this Commission by Sir T. H. Farrer, Messrs. Gray, O'Dowd, and Hamel will repay a careful perusal.

(b) *Ibid*, p. 294.

to the preservation of human life that these Inquiries should be conducted in such a manner as may best disclose the circumstances to which every disaster at sea should be ascribed. We attach, therefore, great importance to instituting such a searching and impartial Inquiry as may elicit the facts of the case, and may show whether the casualty is owing to the faulty construction of the vessel, to bad stowage, to circumstances connected with the navigation, to the incompetency of officers, or to the neglect or misconduct of the crew. * * * * We think that enactments relating to the punishment of the master and crew, whose negligence has occasioned loss of life or property, should be framed of a more definite and stringent character than those now in existence. * * * * We attach great importance to these Inquiries as affording the best means of ascertaining on whom the culpability rests for losses at sea, and we believe that such Inquiries followed by the proceedings which we have suggested (*i.e.*, cancelling of certificates and punishment of master and crew guilty of negligence) would be more conducive to the safety of life at sea than many of the complex and minute regulations which Parliament has heretofore enacted."

The Commissioners were of opinion that by these Inquiries the causes of disasters at sea would be more fully disclosed, and attention would be called to matters connected with navigation by which the dangers of a seafaring life might be diminished.(a)

Practical results of the Reports of the Royal Commission.

The Reports of the Commission recommended alterations in the constitution and procedure of the Courts holding the Inquiries, and practical effect was given to their recommendations by the appointment of a Wreck Commissioner (b); by the requirement that Assessors of special skill or knowledge shall in every case assist the presiding authority; (c) by the enactment that in cases where the cancellation or suspension of a certificate is likely to be involved, two at least of the assessors shall have experience in the Merchant

(a) Report and Evidence of the Royal Commission, vol. II., 1874, p. xii. The two Reports are set out in the Appendix, page 225.
(b) 39 & 40 Vict., c. 80, s. 29, see post, page 62.
(c) *Ibid*, sec. 30.

Service [a]; by the power conferred upon the Lord Chancellor to make Rules of Procedure [b]; by securing to any person charged an opportunity of making a defence [c]; by the power to hold Inquiries and Formal Investigations as to stranded or missing ships [d]; by the extension of the ordinary limits of jurisdiction of Justices and Stipendiary Magistrates [e]; by granting the right of appeal, and in certain cases of a rehearing [f]; and by alterations in the mode of appointment and selection of Assessors. [g]

Efforts have therefore been made by successive steps in legislation to improve the procedure of Courts of Formal Investigation, and although few will maintain that imperfections do not still exist, it may fairly be urged that most of the changes already made have been rightly directed so far as they have gone. The results of the more recent legislation, apart from that which affects Inquiries, afford a wider field for controversy. The revolution effected in the construction and equipment of ships by the substitution of steamships for sailing ships, of iron for wood, and (in a minor degree at present) of steel for iron, have undoubtedly complicated the question of comparative safety of life at sea. Whether after making allowance for the new dangers incident to such changes they have been attended by any general increase of safety is a matter upon which a diversity of opinion exists, but in taking a survey of the past thirty-five years, there are indications of progress and improvement which may be noticed with satisfaction. Numerous appliances for saving life have been introduced into the equipment of vessels, as well as established on the coasts; a keener supervision has been exercised over the boilers and machinery of steamships and repairs; the construction and stability of ships have been repeatedly discussed and the results made public; the

Improvements established in measures for safety of life at sea.

(a) Shipping Casualties Investigations Act, 1879 (42 & 43 Vict., c. 72), s. 3, see post, page 65.
(b) 39 & 40 Vict., c. 80, s. 30.
(c) *Ibid.*
(d) *Ibid*, sec. 32, and see post, pages 28, note (a), and 63.
(e) *Ibid*, sec. 33, page 64.
(f) Shipping Casualties Investigations Act, 1879, s. 2.
(g) *Ibid*, sec. 3.

special dangers incident to coal [a], iron, grain [b], rice, and other cargoes have been exposed; light has been thrown upon numerous questions bearing upon the administration of the Merchant Shipping Acts by the Board of Trade; some progress at least has been made towards the solution of the vexed question of free-board; the incompetency and misconduct of masters and other officers have been the subject of constant inquiry and punishment; the guarantees of their efficiency have been strengthened by the test of a public examination before a Government Board; harbours have been increased and improved; light-houses and beacons have been erected in localities the dangers of which have been made apparent by Inquiries into shipwrecks or otherwise; lightships have been established off the coasts as experience has dictated; buoys have been laid down in dangerous channels; trustworthy charts have been issued as the result of careful and continuous surveys; unsuspected errors have been discovered in published charts; elaborate sailing rules, accepted by many foreign governments, have been formulated; and valuable safeguards for ships and crews have been made known, introduced, and adopted.

In estimating results of past legislation regard must be had to the extraordinary increase of British shipping.

In estimating the general results of the legislation to which the labours of the Committees of 1836 and 1843 gave rise, it is but fair to remember the extraordinary and ever-growing increase in the number and tonnage of British ships, as well as the bearing of that increase upon the supply of really efficient officers. It is only by a recognition of the fact that much of the benefit of legislation must of necessity be negative, indirect, and of slow develop-

(a) The causes of spontaneous combustion and explosion of coal gas in ships have been considered with most useful results by a Royal Commission. Their able and exhaustive Report, see Parliamentary Paper 1586, 1876, contained recommendations which have been made the subject of an "Official Caution" (see Appendix, p. 233), and by means of the machinery of the Board of Trade have been pressed upon the attention of all shipowners and shipmasters and other persons interested in the working and shipment of coal.

(b) A recent Act, the Merchant Shipping (Carriage of Grain) Act, 1880, has been passed upon this subject, and by virtue of its provisions, Rules have been approved by the Board of Trade for the stowage of grain cargoes from the United States, Canada, Australia, Germany, the Mediterranean, and Black Sea. The Act and Rules are set out in the Appendix, page 285.

ment and by a broad comparison of the present with the past that a true estimate can be formed.

Sir T.H. Farrer's Memorandum of 1875.

Upon this point Sir T. H. Farrer has permitted a reference to a Memorandum prepared by him in November, 1875, in which was collected a great body of facts and statistics for the purpose of testing the question whether British Shipping had deteriorated or improved since the repeal of the Navigation Laws in 1849. Extracts from the Memorandum will be found in the Appendix, page 336.

Whether or not upon a just review of past legislation the safety of life at sea may be said to have relatively increased, the Royal Commission on Unseaworthy Ships expressed the opinion that by means of Inquiries into shipwrecks attention has been directed to many sources of danger, and a stimulus has been given to the ingenuity and sense of humanity of individuals in devising means for their removal. ([a])

([a]) The same point is repeatedly illustrated in the Evidence and Reports of the Select Committee of 1860 and the evidence before the Royal Commission of 1873, and also in the Reports of Formal Investigations.

In connection with this subject may be mentioned the power conferred for the first time by section 32 of the Merchant Shipping Act, 1876 (see, p. 63) to investigate the cases of "missing ships." That enactment has undoubtedly had a beneficial operation, a result which may be partly due to the necessarily wide field of inquiry in such cases. In the absence of all evidence of the casualty itself, every reasonable theory of the cause of loss which the circumstances may suggest must be discussed, in order that the Court of Inquiry may select that which may in their judgment present the greatest probability. In a Memorandum prepared by Mr. Gray, Assistant-Secretary to the Board of Trade, in January, 1880, "On recent losses of British Steamships," the following passage occurs:—"There is every reason to believe that the action of the Board of Trade in giving publicity to the excellent and exhaustive Report of the Royal Commissioners who inquired into the causes of spontaneous combustion and explosion of coal gas in ships, has greatly reduced the number of such casualties, and there is very little doubt that if all the information about these lost and missing grain and coal laden ships were classified and made public, and if formal investigation were made into every case of the foundering or disappearance of a grain laden ship (even though in some cases we should not get much information beyond the particulars of the construction, dimensions and deck fittings of the ship), the interests of owners and underwriters would soon lead them to the discovery of an improvement in the stowage of grain, and in the ships in which it is carried."

The usefulness of Inquiries for administrative purposes may be said to begin when the public proceedings come to an end. The Reports are officially scanned, weighed, and exhaustively discussed, and their results tabulated and noted for immediate or future action by the Board of Trade, or as a basis for further legislation as the

It is equally certain that increased carefulness and knowledge on the part of officers of ships have been induced by the fear of Inquiries, and the consequent exposure of incompetence, and while it cannot be said that the recognition extended to merit, competence, and good conduct, by the Courts holding these Investigations is an adequate compensation for the anxiety and cost which they frequently involve, it must yet be an acceptable reward to the skilful and careful seaman who prides himself on his success in his profession.

In adverting to the question of safety of life at sea it would be unjust to pay no tribute to the energetic and self-denying efforts of Mr. Samuel Plimsoll, late M.P. for Derby, whose enthusiastic championship of seamen, and success in compelling public attention to the dangers of the sea, are matters of history.

case may require. This mode of procedure had been found of great value, and it is that to which Mr. Gray refers in the above Memorandum in suggesting the "publication and classification of information as to lost and missing grain and coal laden ships." A précis is from time to time made of the facts and conclusions stated in the Reports of important Inquiries, and these are widely circulated among shipowners and shipmasters by way of "official caution" upon the subject so treated. The latest of these, summing up the results of typical Inquiries in regard to neglect, overloading, bad stowage, imperfect ventilation, and faults of construction and machinery, will be found in the Appendix, page 249.

In another Memorandum upon "Missing Vessels" prepared by Mr. Monkhouse of the Board of Trade, in July, 1880, the following passages occur:—"It is no doubt in a great measure due to the late Inquiries into missing ships that public attention has been called to systematic overloading and the dangerous construction of highly-classed vessels. * * * The agitation from outside, the appointment of the Wreck Commissioner, the prominence given to his Reports in the newspapers, the passing of the Act of 1876, are all necessary steps which have led up to the present usefulness of Inquiries into missing ships, to which may be added the immense amount of information collected and published by the Board of Trade. * * * * It is not that the Inquiries have brought out facts not known to the Board of Trade, but that they have published them with power, and that this power is what they never had before—gradual in growth, but unexpected in its ultimate force. It may even be doubted whether many of the conclusions of the Wreck Courts are trustworthy. It is certain that the decisions arrived at as to the actual cause of loss in each case should be received with caution. Without witnesses of the disaster, conclusions must be problematical, whether in 1860 or 1880, and the real justification for these Inquiries, viz., that the public is interested in them and reads the Reports of them, and the hidden causes of loss of life become a public subject of debate, and owners and underwriters are forced by the light of public opinion to see their responsibilities—has not existed till very recently."

PART II.

CHAPTER I.

PRELIMINARY INQUIRIES INTO WRECKS OR OTHER CASUALTIES.

Foundation of the present system of Wreck Inquiries.

The existing system of Inquiries into wrecks and shipping casualties is governed by Part VIII. of the Merchant Shipping Act, 1854, as amended by the Merchant Shipping Act Amendment Acts of 1862 and 1876, the Shipping Casualties Investigations Act, 1879, and the Merchant Shipping (Colonial Inquiries) Act, 1882. The Inquiries are, strictly speaking, of two kinds:—

Two kinds of Inquiries.

I. Preliminary Inquiries.

II. Formal Investigations.

I. Preliminary Inquiries.

I. Preliminary Inquiries properly come within the scope of this book. It is true that they are not by law steps necessarily precedent to the Formal Investigations described in subsequent chapters, yet they do in fact frequently lead to them and were originally designed to do so. For that reason, and also because the enactments which relate to them are intermixed with those which provide for Formal Investigations, it is desirable to give some account of the Preliminary Inquiries. They are authorised by sections 14, 432, 448 of the Merchant Shipping Act, 1854, and sections 31 and 32 of the Merchant Shipping Act, 1876. Inquiries in colonies will be the subject of a later chapter; it may, however be stated, that in general they are dependent upon the Colonial legislation, which is set out in the Appendix.

Classification of Preliminary Inquiries.

These Preliminary Inquiries may be conveniently classified with reference to the persons authorised to hold them, as follows:—

I.—Inquiries by an Inspecting Officer of Coast Guard, a Principal Officer of Customs, or a person specially appointed by the Board of Trade.

II.—Inquiries by a Receiver of Wreck, or a Wreck Commissioner or his deputy.

III.—Inquiries by an Inspector.

I.

Inquiries by an Inspecting Officer of Coast Guard, a Principal Officer of Customs, or a Person Specially Appointed by the Board of Trade.

The enactments relating to this class, are the following:— 17 & 18 Vict., c. 104, sec. 422.

Cases in which an Inquiry may be held.

"In any of the cases following, that is to say:—

Whenever any ship [a] is lost, abandoned, or materially damaged on [b] or near the coasts of the United Kingdom;

"Whenever any ship causes loss or material damage to any other ship on or near such coasts;

"Whenever by reason of any casualty happening to or on board of any ship on or near such coasts, loss of life ensues;

"Whenever any such loss, abandonment, damage, or casualty [c] happens elsewhere, and any competent witnesses thereof arrive, or are found at any place in the United Kingdom,

"It shall be lawful for the Inspecting Officer of the Coast Guard or the Principal Officer of Customs residing at or near the place where such loss, abandonment, damage or casualty occurred, if the same occurred on or near the coasts of the United Kingdom, but if elsewhere, at or near the place where such witnesses as aforesaid arrive or are found, or can be conveniently examined, or for any other person appointed for the purpose by the Board of Trade, to make inquiry respecting such loss, abandonment, damage or casualty, and he shall for that purpose have all the powers [d] given by the first part of this Act to Inspectors appointed by the said Board."

"In the following cases:— 39 & 40 Vict., c. 80, sec. 22, sub-sec. 1. Additional cases.

"(1.) Whenever any ship on or near the coasts of the United Kingdom or any British ship [a] elsewhere has been stranded or damaged, and any witness is found at any place in the United Kingdom, or

(a) See post, p. 72, as to the definition of "ship," p. 76 of "British ships," and pp. 39 and 80 as to jurisdiction over foreign ships.

(b) See post, pp. 38 and 81, as to the definition of "on the coasts."

(c) Defined by Section 29 of the Merchant Shipping Act, 1876, as a "Shipping casualty," see post, page 62.

(d) See as to these powers, pages 34 and 40.

39 & 40 Vict., c. 80, sec. 2, sub-sec. 2.

"(2.) Whenever a British ship has been lost or is supposed to have been lost, and any evidence can be obtained in the United Kingdom as to the circumstances under which she proceeded to sea or was last heard of, the Board of Trade (without prejudice to any other powers), may, if they think fit, cause an Inquiry to be made or Formal Investigation to be held, and all the provisions of the Merchant Shipping Acts, 1854 to 1876, shall apply to any such inquiry or investigation as if it had been made or held under the eighth part of the Merchant Shipping Act, 1854."

The casualties are those in which a formal Investigation may be held.

The casualties which may be submitted to a preliminary Inquiry under the above provisions, are identical with those into which there may be a Formal Investigation ([a]).

Accidents to steamships and apprehended loss of British ships to be notified to the Board of Trade.

By the statutes, provision is made for the notification to the Board of Trade of accidents to steamships and of apprehended loss of any British ship owing to her non-appearance or to any other circumstances. The enactments are as follows :—

17 & 18 Vict., c. 104, sec. 326.

"Whenever any steamship has sustained or caused any accident occasioning loss of life or any serious injury to any person, or has received any material damage affecting her seaworthiness or her efficiency either in her hull or in any part of her machinery, the owner or master shall, within twenty-four hours after the happening of such accident or damage, or as soon thereafter as possible, send to the Board of Trade, by letter signed by such owner or master, a report of such accident or damage, and of the probable occasion thereof, stating the name of the ship, the port to which she belongs, and the place where she is; and if such owner or master neglect so to do, he shall for such offence incur a penalty not exceeding fifty pounds."

36 & 37 Vict., c. 85, sec. 22.

"If the managing owner ([b]), or in the event of there being no managing owner, the ship's husband, of any British ship have reason, owing to the non-appearance of such ship, or to any other circumstance, to apprehend that such ship has been wholly lost, he shall, as soon as conveniently may be, send

([a]) See post, pages 57 and 70, Chapter on Jurisdiction of Courts of Formal Investigation.

([b]) As to registration of the Managing Owner, see 39 & 40 Vict., c. 80, s. 36.

to the Board of Trade notice in writing of such loss and of the probable occasion thereof, stating the name of the ship and her official number (if any) and the port to which she belongs, and if he neglect to do so within a reasonable time he shall incur a penalty not exceeding fifty pounds."

36 & 37 Vict., c. 85, sec. 22.

"In every case of collision, in which it is practicable so to do, the master shall immediately after the occurrence, cause a statement thereof, and of the circumstances under which the same occurred, to be entered in the Official Log Book (if any), such entry to be signed by the master, and also by the mate or one of the crew, and in default shall incur a penalty not exceeding twenty pounds."

17 & 18 Vict., c. 104, sec. 323.

Official Log Books to be sent to the Board of Trade.

These Official Logs are to be transmitted to the Superintendents of Mercantile Marine on behalf of the Board of Trade (a).

Additional steps taken by Board of Trade to secure information as to missing ships.

In order to ensure that cases of missing ships not reported by owners shall not be overlooked, the newspapers, the lists of vessels posted as "missing" by Lloyd's, the Registry records, &c., are examined at the Board of Trade. As soon as notice of a missing vessel is received, a printed minute is sent to the Receiver of Wreck with instructions to obtain the necessary information, and to report to the Board of Trade.

Preliminary Inquiry usually conducted by Receivers of Wreck.

The preliminary Inquiry is not usually conducted by the Inspecting Officer of Coast Guard, but by Receivers of Wreck (who, when not Principal Officers of Customs, are appointed for the purpose) (b), residing at or near the place of the casualty, if it occurred at or near the coasts of the United Kingdom, but if elsewhere at or near the place where competent witnesses of the casualty arrive, or are found, or can be conveniently examined.

Scope of Preliminary Inquiry.

By means of the powers thus conferred upon officers residing along the coast, due provision is made for transmitting the full details of a casualty to the Board of Trade without delay.

Such Receiver, &c., to have the powers of an Inspector.

The officers and persons above mentioned have, for the purpose of such Inquiry, all the powers given by the first part of the Merchant Shipping Act,

(a) 17 & 18 Vict., c. 104, ss. 286 and 287.
(b) 17 & 18 Vict., c. 104, s. 432.

17 & 18 Vict., c. 104, sec. 15, sub-sec. 1.

1854, to Inspectors appointed by the Board of Trade (a). These powers are very ample, and are defined in sections 15 & 16 of the same Act as follows:—

Powers of an Inspector.

"(1.) He [an Inspector] may go on board any ship, and may inspect the same or any part thereof, or any of the machinery, boats, equipments, or articles on board thereof to which the provisions of this Act apply, not unnecessarily detaining or delaying her from proceeding on any voyage:

Sub-sec. 2.

"(2.) He may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make:

Sub-sec. 3.

"(3.) He may, by summons (b) under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers or returns to any inquiries he thinks fit to make:

Sub-sec. 4.

"(4.) He may require and enforce the production of all books, papers, or documents which he considers important for such purpose:

Sub-sec. 5.

"(5.) He may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination:

"And every witness so summoned as aforesaid shall be allowed such expenses as would be allowed to any witness attending on subpœna to give evidence before any Court of Record, or if in Scotland, to any witness attending on citation the Court of Justiciary; and in case of any dispute as to the amount of such expenses, the same shall be referred by the Inspector to one of the Masters of Her Majesty's Court of Queen's Bench in England or Ireland, or to the Queen's and Lord Treasurer's Remembrancer in Scotland, who, on a request made to him for that purpose under the hand of the said Inspector, shall ascertain and certify the proper amount of such expenses; and every person who refuses to attend as a witness before any such Inspector, after having been required so to do in the manner hereby directed and

(a) 17 & 18 Vict., c. 104, s. 432.

(b) For Form of Summons in use under this Section, see Appendix, page 577.

after having had a tender made to him of the expenses (if any) to which he is entitled as aforesaid, or who refuses or neglects to make any answer, or to give any return, or to produce any document in his possession, or to make or subscribe any declarations which any such Inspector is hereby empowered to require, shall for each such offence incur a penalty not exceeding ten pounds."

Sec. 16. Penalty for obstructing an Inspector.

"Every person who wilfully impedes any such Inspector appointed by the Board of Trade as aforesaid in the execution of his duty, whether on board any ship or elsewhere, shall incur a penalty not exceedings ten pounds, and may be seized and detained by such Inspector or other person or by any person or persons whom he may call to his assistance until such offender can be conveniently taken before some Justice of the Peace or other officer having proper jurisdiction."

Importance of Preliminary Inquiries.

Preliminary Inquiries conducted under powers so extensive are of considerable importance, especially as a Formal Investigation may or may not follow, and accordingly the Board of Trade have from time to time issued careful Instructions for the guidance of persons authorized to hold such Inquiries ([a]).

Their object.

The procedure has in general been limited so far as regards the subject of this book to the collection of such evidence and information respecting a casualty, as may enable the Board of Trade to determine whether a Formal Investigation should or should not be held. This limitation of the scope of Preliminary Inquiries has been distinctly approved by the Royal Commission on Unseaworthy Ships, which reported as follows:—

"Founding our opinion on the evidence which we have obtained, we recommend that the Preliminary Inquiry by the Receiver of Wrecks should be limited to such a narrative statement as would enable the Board of Trade with the aid of their legal adviser to decide upon the propriety of an Official Inquiry ([b])."

([a]) See Appendix, page 347. The Instructions embrace also the collection of information for the statistical and other departmental purposes of the Board of Trade.

([b]) Royal Commission on Unseaworthy Ships, Report and Evidence, vol. II., 1874, page 11.

Procedure in Preliminary Inquiries.

The course of procedure actually pursued has been concisely described by Sir T. H. Farrer, in his evidence given before the Royal Commission on Unseaworthy Ships, as follows:—

"When a ship is lost on the coast of the United Kingdom, or when the crew of a ship lost come to the United Kingdom, the nearest Receiver of Wreck, who is generally the Collector of Customs, is bound to send a report to the Board of Trade. For the purpose of drawing up that report he puts himself in communication with the nearest officers of the Coast Guard, or if there are nautical questions involved he gets the best assistance of that kind he can, and he holds a preliminary investigation under very careful directions and forms prepared by the Board of Trade. That report is sent up at once to the office in London [a]."

Contents of Report.

The report is in practice confined to a bare statement of the casualty being always accompanied by the more complete materials for consideration supplied by the depositions themselves.

II.

Inquiries by a Receiver of Wreck, or a Wreck Commissioner or his Deputy.

The provisions relating to the second class of Inquiries are the following:—

17 & 18 Vict., c. 104, sec. 448. Power of Receiver or Justice to institute examination on oath with respect to ships in distress.

"Any Receiver [of Wreck], or in his absence any Justice of the Peace, shall, as soon as conveniently may be, examine upon oath (which oath they are hereby respectively empowered to administer) any person belonging to any ship [b] which may be or may have been in distress [c] on the coasts [d] of the United Kingdom, or any other person who may be

(a) Royal Commission on Unseaworthy Ships, Report and Evidence, vol. II., 1873, page 35.

(b) See post, pages 39 and 81, as to application to foreign ships.

(c) The question whether a ship is "in distress" must depend upon the locality, the state of the elements, the condition of the ship, and other matters, and each case must be determined by reference to the surrounding circumstances, and whether having regard to all of these the condition or position of the vessel is such that it is in serious danger, and in need of assistance, or is wrecked.

(d) See post, pages 39 and 80, as to the meaning of the words "on the coasts."

able to give any account thereof or of the cargo or stores thereof, as to the following matters; (that is to say,)—

Subject matter of examination.

(1.) The name and description of the ship;
(2.) The name of the master and of the owners;
(3.) The names of the owners of the cargo;
(4.) The ports or places from and to which the ship was bound;
(5.) The occasion of the distress of the ship;
(6.) The services rendered;
(7.) Such other matters or circumstances relating to such ship, or to the cargo on board the same, as the Receiver or Justice thinks necessary:

Depositions to be in writing. One copy to be sent to the Board of Trade. A second copy to be sent to the Secretary of Lloyd's for public inspection.

And such Receiver or Justice shall take the examination down in writing, and shall make two copies of the same, of which he shall send one to the Board of Trade, and the other to the Secretary of the Committee for managing the affairs of Lloyd's in London, and such last-mentioned copy shall be placed by the said Secretary in some conspicuous situation for the inspection of persons desirous of examining the same; and for the purposes of such examination every such Receiver or Justice as aforesaid shall have all the powers given by the first part of this Act (a) to Inspectors appointed by the Board of Trade." (b)

Receiver, &c., to have the powers of an Inspector under section 15 of the Merchant Shipping Act, 1854.

This provision has proved to be of great general value, not only to the Board of Trade, but also to the Shipping community, and to Underwriters.

Depositions frequently lead to a Formal Investigation.

The Board of Trade, on perusing the depositions, which are accompanied by a report from the Receiver or other officer, frequently find reason to believe that a Formal Investigation may be usefully held to inquire into the circumstances which have led to a ship being in distress on the coasts of the United Kingdom, and they accordingly exercise their powers to order such Investigation under section 433 of the Merchant Shipping Act, 1854 (c), and these depositions, &c., answer exactly the same purpose as preliminary Inquiries under section 432 above described.

Wreck Commissioner to hold same examination as Receiver of Wreck.

With a view to confer a still higher authority upon such examinations, the Legislature, by the Merchant Shipping Act, 1876, empowered a Wreck Commis-

(a) 17 & 18 Vict., c. 104, s. 15, *ante*, page 34.
(b) 17 & 18 Vict., c. 104, s. 448.
(c) See post, page 57.

39 & 40 Vict., c. 80, sec. 31.

sioner to institute at the request of the Board of Trade by himself, or by some deputy approved by the Board, the same examination as a Receiver of Wreck.

The enactment is as follows :—

"A Wreck Commissioner may, at the request of the Board of Trade, by himself, or by some deputy approved by the Board of Trade, institute the same examination as a Receiver of Wreck under section 448 of the Merchant Shipping Act, 1854, and shall for that purpose have the powers by that section conferred on a Receiver of Wreck" (a).

No such examination by the Wreck Commissioner has yet taken place. The Inquiries are in practice held by a Receiver of Wreck.

Depositions of which copies may be required as a matter of right.

Some misunderstanding has occasionally arisen upon the subject of the depositions of which, as a matter of right, copies may be required, and it may be useful to state that the only depositions on wrecks which are, by the Merchant Shipping Acts, made public documents, are those taken under section 448 above described. They are by the provisions of that section posted at Lloyd's where they may be inspected, and the Receivers of Wreck supply copies on application made to them.

"On the coasts of the United Kingdom."

The words in the above enactment (sec. 448 of the Merchant Shipping Act, 1854) "on the coasts of the United Kingdom" would seem at first sight to limit the Inquiries to a small number of cases, as apparently involving the requirement that vessels should be literally touching the dry land. To have so limited them would, however, have placed an unreasonable limitation upon the enactments, and have restricted their operation in a manner that would have seriously crippled their efficiency. They have accordingly been judicially interpreted (b) as being a nautical phrase having an extended meaning, and as being equivalent to "near or in the vicinity of the shore or coast." The question of nearness or vicinage must, therefore, be decided according to the special circumstances of every case. It would seem, too, that harbours, rivers, or tidal waters, should be included

Scope of definition.

(a) 39 and 40 Vict., c. 80., s. 31.

(b) The *Leda*, 1 Swabey 40; the *Mac.*, 7 Prob. Div. 126; see also post, pages 71 and 81.

under the words "on the coast," and "on the shore," or "near the coast or shore."

Foreign ships.

Questions may sometimes arise as to whether foreign ships and their crews are subject to these enactments. The decision of these must depend on the words employed by the Legislature therein. The enactments are to be interpreted, it is apprehended, as not being intended to apply to foreigners and their property when they are outside British territory, but as applying to them when they come within it, on the broad grounds that it cannot in the former case be presumed that the Legislature would exceed its jurisdiction, and in the latter that foreigners when they place themselves or their property within British territory must submit to British law (a).

Where British territor ends.

The question of where British territory ends is one which has at different periods been differently answered. On the one hand, British authority has been said to extend over the "narrow seas," and on the other, to be confined to a distance variously stated at three miles, or a league, and a cannon's shot from the land. The latest judicial decisions contradict all these assertions. The realm of England must be taken for the purposes of jurisdiction to extend in any event down to low water mark, and to all waters "inter fauces terrae." Until the question has been reviewed, and the authorities above referred to have been modified, or over-ruled, it must be accepted that for the purposes in question, the realm of England does not extend beyond the last mentioned limits (b).

III.

Inquiries by an Inspector.

17 & 18 Vict., c. 104, sec. 14.

Inquiry by Inspector thereunder.

The third class of preliminary Inquiries is authorized by section 14 of the Merchant Shipping Act, 1854, the provisions of which are as follows:—

"The Board of Trade may from time to time, whenever it seems expedient to them so to do, appoint

(a) See post, page 80.

(b) *Reg.* v. *Keyn*, 2 Ex. Div. 63; *Harris* v. *Owners of "Franconia,"* 2 C.P. Div. 173; *Embleton* v. *Brown*, 30 L.J. M.C. 1; *Cunningham's* case, Bell's C.C. 26; *The Blackpool Pier Company* v. *Fylde*, 46 L.J. M.C. 189. In the first-mentioned case will be found a very exhaustive discussion of the three mile or cannon shot theory. See also the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict., c. 73.)

17 & 18 Vict., c. 104, sec. 14.

any person, as an Inspector, to report to them upon the following matters; (that is to say,)

Sub-sec. 1.

"1. Upon the nature and causes of any accident or damage which any ship has sustained or caused, or is alleged to have sustained or caused:

Sub-sec. 2.

"2. Whether the provisions of this Act or any regulations made under or by virtue of this Act have been complied with:

Sub-sec. 3.

"3. Whether the hull and machinery of any steamship are sufficient and in good condition."

Powers of Inspector under section 15.

The powers of an Inspector appointed under the above section are described in sections 15 and 16 of the Act, and have already been set forth ([a]), and it has been seen that extensive authority is conferred upon him to enable him to inspect and enter upon a ship or premises, to compel the attendance of witnesses, and the production of books or documents, and to administer oaths.

The above sections have in practice been found a very useful supplement to the powers of inquiry under the other provisions of the Merchant Shipping Acts. A notable instance occurred in the case of the *Deutschland*, a German steamer, which was lost on the Kentish Knock Sand, off Harwich, in December, 1875 ([b]). The Inquiry was, however, in that case itself a thorough Investigation, and was presided over by the present Wreck Commissioner, who made an exhaustive Report upon the whole case.

In what sense Preliminary Inquiries.

In practice an Inquiry by an Inspector has frequently followed a Preliminary Inquiry of the first class, and has never resulted in a more formal Investigation. It cannot however be treated as being in itself a Formal Investigation in a technical sense, nor can it have the practical consequences which are attendant on that proceeding. For this reason, and because the reports of Inspectors are preliminary as taken with a view to some subsequent action on the part of the Board of Trade, the Inquiries instituted by such Inspectors have been described in the present chapter.

([a]) *Ante*, pages, 34 and 35.
([b]) See page 82.

CHAPTER II.

Formal Investigations by Courts of Inquiry.

Formal Investigations may be described under the following classification:— Classification.

I. Formal Investigations or Wreck Inquiries in the United Kingdom.

II. Investigations by a Local Marine Board or persons appointed by the Board of Trade ([a]).

III. Investigations in British Possessions abroad ([b]).

IV. Investigations by Naval Courts in foreign countries ([c]).

I. Formal Investigations in the United Kingdom.

Formal Investigations in the United Kingdom.

The earliest enactments now in force with reference to Formal Investigations into the causes of shipping casualties, or Wreck Inquiries, to be conducted in the United Kingdom are contained, as stated in a previous Chapter, in Part VIII. of the Merchant Shipping Act, 1854, which amended and consolidated the earlier statutes relating to Merchant Shipping, and accordingly forms the basis of the existing law for the conduct of Inquiries. That Act has been amended by subsequent legislation, especially by the Merchant Shipping Acts Amendment Acts of 1862 and 1876, and the Shipping Casualties Investigations Act, 1879 ([d]).

The powers conferred upon Inspecting Officers of Coast Guard, Customs Officers or any other person appointed for the purpose by the Board of Trade, to inquire into such casualties have been already referred to in the Chapter on Preliminary Inquiries ([e]). But many cases occur in which a more formal investigation is necessary, and provision is accordingly made for the constitution of tribunals to hold such investigations. These tribunals may be set in motion, either at the instance of the above-mentioned officers, or the person appointed by the Board

([a]) See page 130.
([b]) See page 149.
([c]) See page 158.
([d]) The enactments are stated at length in a later Chapter. See page 56, *et seq.*
([e]) See *ante*, page 34.

Formal Investigations are always instituted by order of the Board of Trade.

of Trade, with or without a Preliminary Inquiry of his own [a]. In practice, however, they are invariably instituted by the direction of the Board of Trade.

Materials for deciding upon a Formal Investigation.

The materials which guide the Board of Trade in deciding upon the necessity for a Formal Investigation consist in some cases of a short Report [b] of the Officer of Customs (Receiver of Wreck) who has examined the principal witnesses of a casualty, such Report being accompanied by their depositions. Information of a confidential character is sometimes supplied to the Board of Trade, which, if obviously genuine and well-founded, has its due weight in forming their conclusions. In some cases the Board of Trade are determined in their judgment as to a Formal Investigation by the mere fact of loss of the ship or loss of life, and in others by the examinations on oath, taken by a Receiver of Wreck, or Justice of the Peace, or other persons, under sections 432 and 448 of the Merchant Shipping Act, 1854 [c].

Guiding principles in the ordering of Formal Investigations.

The general principles which govern the Board of Trade in ordering a Formal Investigation were stated by Sir T. H. Farrer, in his evidence before the Select Committee of 1860, and the Royal Commission on Unseaworthy Ships of 1873, in the following terms:—

"In all cases where any fact whatever is found indicating any suspicion, or any question of importance, whether relating to the ship or to things outside the ship, such as charts, lighthouses, pilots, and the like, in short any question important to navigation which seems likely to be elucidated by inquiry, then the case is looked into, and if it appears to be one requiring further inquiry, it is ordered."

Loss of life.

Mr. Gray, in like manner, stated the principle to be, that if any good can come out of an Inquiry, or if there appear to be circumstances which require investigation, it is, if possible, held [d]. Loss of life

(a) 17 & 18 Vic., c. 104, s. 433. See post page 57.
(b) See *ante*, page 35.
(c) See *ante*, Chap. I., pages 31 and 36.
(d) Report and Evidence on Unseaworthy Ships Commission, vol. II., 1873, pp. 80 and 408. Also vol. II., 1874, pp. 50 and 51, and Report and Evidence of Select Committee of 1860, pp. 541-2.

was also referred to by the same witnesses, and is in fact a strong determining element among the grounds for ordering a Formal Investigation. Cases of collision present some difficulty in two respects. In the first place, such cases are generally tried as between the respective owners in the Admiralty Division of the High Court, and if an Inquiry be ordered they become the subject of a double investigation. In some instances (when a body is washed ashore from one of the ships and an inquest is held) there may be a triple investigation, a state of things which, on the ground of expense and inconvenience to the parties, it is obviously desirable to avoid. Yet the proceedings in the Court of Admiralty can only determine the pecuniary responsibility of the owners, and a Coroner's Court is not so constituted as to be qualified to deal with questions of navigation, while neither tribunal can in such proceedings exercise jurisdiction over the certificated officers whose conduct may have caused the collision itself, or, after the collision, may have constituted a breach of the obligations imposed by statute upon the master or person in charge of a ship which has been in collision ([a]).

Collisions.

In the second place, the Admiralty Division is the Court of Appeal ([b]) from Courts of Formal Investigation in England, those tribunals sitting with Assessors selected under different Rules of procedure, and it might well happen that by whichever Court the case is first heard, the decisions might be diverse ([c]). In either case, a second resort to the Admiralty Division by way of Appeal might become necessary.

In these circumstances, the Board of Trade may be expected, as a general rule, when proceedings in the Admiralty Division are pending, to hold their

([a]) 36 & 37 Vict., c. 85, s. 16. See post, page 61.

([b]) 42 & 43 Vict., c. 72, s. 2, sub-sec. 2. See post, page 183.

([c]) In a recent Formal Investigation into a collision between the steamship *Gerarda* and the *Benares*, the Wreck Commissioner remarked upon the difficult position in which the Court would be placed were they to come to a conclusion differing from that of the Admiralty Division previously arrived at, and the Board of Trade, entertaining the opinion that no public purpose would be served by the Formal Investigation, directed the proceedings to be stayed accordingly.

judgment in suspense in order to consider, by the light of those proceedings, should they advance to a trial, whether there is sufficient ground for a Formal Investigation.

Abandonment. The abandonment of a ship at sea is also held to be a generally conclusive reason for inquiry.

Missing ships. A Formal Investigation is ordered almost as a matter of course into the disappearance of vessels known as "Missing Ships," if sufficient evidence can be obtained.

Inquiries have been ordered at the instance of the Masters of ships themselves ([a]).

Order for Formal Investigations. The actual authority to the person who is to hold the Formal Investigation is contained in a written Order under the hand of an Assistant-Secretary of the Board of Trade which, by statute, is to be deemed to be issued under the direction of the Board without further proof unless the contrary be shown ([b]). The form of the Order is given in the Appendix, page 579.

We will discuss the forms of Inquiry named at the commencement of this Chapter in the order there indicated.

([a]) Report and Evidence of Select Committee of 1860, page 543.
([b]) 17 & 18 Vict., c. 104, s. 7.

CHAPTER III.

Constitution of Courts of Formal Investigation in the United Kingdom.

A Court of Inquiry for hearing a Formal Investigation is composed of either

1. A Wreck Commissioner,
2. A Stipendiary Magistrate,

or,

3. Two Justices,

sitting in either case with an Assessor or Assessors of nautical or engineering or other special skill or knowledge.

The appointment of Wreck Commissioners is regulated by the following enactment :—

Appointment of a Wreck Commissioner. 39 & 40 Vict., c. 80, sec. 29.

"For the purpose of rendering investigations into shipping casualties more speedy and effectual it shall be lawful for the Lord High Chancellor of Great Britain to appoint from time to time some fit person or persons to be a Wreck Commissioner (a) or Wreck Commissioners for the United Kingdom, so that there shall not be more than three such Commissioners at any one time, and to remove any such Wreck Commissioner; and in case it shall become necessary to appoint a Wreck Commissioner in Ireland the Lord Chancellor of Ireland shall have the appointment and the power of removal of such Wreck Commissioner.

"It shall be the duty of a Wreck Commissioner, at the request of the Board of Trade, to hold any formal investigation into a loss, abandonment, damage or casualty (in this Act called a shipping casualty) under the eighth part of the Merchant Shipping Act, 1854, and for that purpose he shall have the same jurisdiction and powers as are thereby conferred

(a) At present one Wreck Commissioner only has been appointed for the United Kingdom, viz., Mr. Henry Cadogan Rothery, formerly Registrar of the Admiralty Division of the High Court. It has not yet been found necessary to appoint a Wreck Commissioner for Ireland.

39 & 40 Vict., c. 80, sec. 29.

on two Justices, and all the provisions of the Merchant Shipping Acts, 1854 to 1876, with respect to investigations conducted under the eighth part of the Merchant Shipping Act, 1854, shall apply to investigations held by a Wreck Commissioner."

The Wreck Commissioner is therefore put in motion by, and holds a Formal Investigation "at the request of the Board of Trade," at whose instance a Stipendiary Magistrate or two Justices also invariably "hear and try a case." This office of Wreck Commissioner was created for the purpose of carrying into practice the recommendations of the Royal Commission on Unseaworthy Ships [a].

Justices and Stipendiary Magistrates derive their authority under sec. 433 Merchant Shipping Act, 1854.

The Justices and the Stipendiary Magistrates derive their authority from section 433 of the Merchant Shipping Act, 1854, which enacts that application may be made by the Officer or person authorised to conduct a preliminary Inquiry under the preceding section [b] to any two Justices or to a Stipendiary Magistrate to "hear and try" the case, and with respect to the Stipendiary Magistrate it is further provided by the 435th section that in places where there is a Local Marine Board, and where a Stipendiary Magistrate is a member of such Board all Formal Investigations shall, whenever he happens to be present, be made before such Magistrate [c].

Additional provision with respect to Scotland. Formal Investigations in

In the case of any Formal Investigation to be held in Scotland, the Board of Trade may, if it so thinks fit, remit the same to the Lord Advocate to be prose-

[a] Mr. Courtenay P. Ilbert, in his copy of the "Merchant Shipping Act, 1876," with notes, writes as follows:—"The importance of making better provision for the holding of these investigations was dwelt upon by the Royal Commission into unseaworthy ships, and the desirability of appointing a special authority for the purpose was urged by the late Sir Thomas Henry, on the ground that the Police Magistrates who now hold the investigations in London (Greenwich) have no time to do so, and are not by their ordinary avocations and habits of mind so well qualified to conduct them as a person would be who had more acquaintance with shipping law and practice, and was more accustomed to inquiring as distinguished from adjudicating, than a Police Magistrate can possibly be."

[b] 17 & 18 Vict., c. 104, s. 432. See post, page 57.

[c] See post, page 58.

cuted in such manner as he may direct [a]. In practice this power is not acted upon [b].

Scotland and Ireland are in fact heard as in England.

Assessors.

The Assessors form an element of great importance in the constitution of a Court of Inquiry, as the Court necessarily depends upon them for information and advice concerning the nautical or technical aspect of the evidence and case before them. Under section 434 of the Merchant Shipping Act of 1854, as amended by the Merchant Shipping Act Amendment Act, 1862, section 23, the Board of Trade had the power either at the request of the Justices or Magistrate, or at their own discretion to appoint a nautical or engineering Assessor or Assessors in cases where special skill or knowledge was required. In practice this power was always exercised. The appointment of the Assessors, who had the power of dissenting from the conclusions of the Court and assigning their reasons therefor, thus rested with the same authority as that which instituted the inquiry either directly or indirectly. Though no instance of abuse occurred in the appointment of Assessors, it was thought better that the method of their appointment should be altered in order to obviate any possibility of the complaint, that the Board could make a Court which would be the practical exponent of its own views, and in order to render the tribunal, which was naturally regarded by masters and shipowners with no over-friendly eye, as fair and independent, and as much beyond suspicion as might be. Accordingly the above provisions were, in 1876, repealed, and substituted provisions were enacted by the Merchant Shipping Act of that year [c].

Former power of the Board of Trade at the request of the Justices or Magistrate, or at their own discretion, to appoint nautical or engineering Assessors.

By section 30 of that Act the Wreck Commissioner, Justices or other authority holding a Formal Investigation into a shipping casualty were to hold the same with the assistance of an Assessor or Assessors of

Formal Investigations to be held with an Assessor or Assessors.

[a] 17 & 18 Vict., c. 104, s. 437. See post, page 59. The above is that part of the section left unrepealed by 39 & 40 Vict., c. 80, s. 45. As it originally stood the section provided further that in case the Lord Advocate so required, the investigation was to be held with the assistance of such person of nautical skill and knowledge as the Board of Trade might appoint for that pursose. By 25 & 26 Vict., c. 63, s. 23, the words "or persons" and "engineering" had been added to the last mentioned provision.

[b] See post, page 55.

[c] These provisions are stated at length at page 62.

nautical, engineering, or other special skill or knowledge to be appointed ([a]) by the Wreck Commissioner, Justices, or Authority out of a list of persons for the time being approved for the purpose by a Secretary of State; and the Wreck Commissioner, Justices, or Authority, when of opinion that the Investigation was likely to involve the cancellation or suspension of the certificate of a master or mate, were, when practicable, to appoint a person having experience in the Merchant Service to be one of the Assessors. Power was moreover given to the Lord Chancellor from time to time to make, and when made, revoke, alter, and add to, General Rules for carrying into effect the enactments relating to Formal Investigations into shipping casualties, and in particular, with respect to amongst other matters, the summoning of Assessors. The changes introduced by these sections were that the power of appointment was transferred from the Board of Trade to the Court, and the presence of an Assessor, hitherto discretionary, was made compulsory.

Power for the Lord Chancellor to make Rules.

Changes in mode of appointing Assessors

No Rules were made before the passing of the Shipping Casualties Act, 1879, upon the subject of summoning Assessors, but they were appointed by the Authority holding the Investigation from the list approved by the Secretary of State under the above provisions. By the last-named Act, a further change was introduced into the method of appointment. The list of approved Assessors was in the first place to continue in force for three years only, thus in effect securing a triennial revision of the list, and a triennial reconsideration of the qualifications of the individuals thereon. Next, the power of selection for each case was taken away from the Authority holding the Investigation, and the Assessor for every Inquiry was to be determined upon according to some scheme to be embodied in the Rules which the Lord Chancellor was empowered to make under the Act of 1876. Lastly, whenever it appeared likely that any question as to the cancelling or suspension of an officer's certificate would be involved, two Assessors

([a]) This part of the section is now altered and another mode of appointment is prescribed by 42 & 43 Vict., c. 72, s. 3, sub-sec. 2. See post, page 65.

at least, of experience in the Merchant Service, were to sit with the Court. In this manner the impartiality of the Assessors was amply secured; and officers of the Mercantile Marine were sure of the presence of persons who may be supposed to be better acquainted with the difficulties and requirements of the Service than Naval Officers. In effect the Merchant Service Assessors are required in the great majority of cases, as there are comparatively few which do not involve a possible dealing with an officer's certificate, and it is now a frequent practice to have three Assessors at an Inquiry.

Language of the Enactments.

The above-mentioned enactments are those contained in section 3 of the Shipping Casualties Investigations Act, 1879, and are stated at length at page 64.

Cardinal changes have thus been effected.

The provision in the Merchant Shipping Act, 1876, for one Assessor in the above class of cases, having experience in the Merchant Service and the provision in the Shipping Casualties Investigation Act, 1879, for two Assessors possessing that qualification, were successively introduced in deference to the strong representations of shipowners and shipmasters. Their objection to Naval Officers as Assessors, whether well or ill-founded, are fully stated in the following language of a witness before the Royal Commission on Unseaworthy Ships of 1873, in a memorandum submitted to them :—

Objections to Naval Officers as Assessors.

"Shipmasters and officers strongly object to Naval Officers being Assessors in these Courts, for while freely admitting their honourable character, they know them to be unfit for judges in many of the cases they have to decide upon; thus want of experience in the Merchant Service prevents them from being acquainted with the difficulties that shipmasters and shipowners are subject to. Where the Merchant Shipmaster counts his crew by units, the Naval Officer in a ship of equal size counts his crew by tens. And the latter are under strict discipline enforced by military law, the Naval Officer having only to give the order and it is immediately executed, while the merchant captain looking at the pecuniary interest of his employers, has too often to solicit or coax his servants to get necessary work done, and

frequently fails to get it executed. The Naval Officer is not acquainted with that kind of discipline, neither is he with the general management, whether of loading, manning, or practical handling of merchant ships; and as Nautical Assessors are really the judges in these Courts (which Mr. Farrer conscientiously admits), it need not be matter of surprise that the masters and officers of the Merchant Service, with their characters and other heavy interests at stake, so strongly object to their judges being men so necessarily unacquainted with the subject matter of investigation" (a).

The feeling on this subject is of long standing, and after making due allowance for natural bias, the objections so strongly urged deserve respect, and as the giving effect to such objections tends to inspire confidence in the Inquiries, the requirement that there should be Assessors of experience in the Merchant Service is one which is certainly calculated to increase the authority and conduce to the beneficial result of Formal Investigations.

Public point of view in this matter.

There is, however, another aspect of this question which must not be overlooked, viz.:—the public advantage to be derived from these Inquiries. If it be objected that Naval Officers cannot make due allowance for the difficulties of a Merchant Captain, it may be also said that Assessors of this latter class may make too much allowance, and if a man's conduct cannot be fairly judged except by members of his own class, there is much that is defective in the whole system of jurisprudence, which contains but little provision at present for special tribunals of this kind. It cannot be reasonably held that Naval Officers who are presumably men of intelligence are unable to judge of situations which their nautical skill and knowledge must specially qualify them to appreciate, while the difficulties of any particular case would not fail to be urged on behalf of the master whose conduct was called in question, and it is not unimportant in the public interest, that persons of such acknowledged independence

(a) Report and Evidence of Royal Commission on Unseaworthy Ships, Vol. II., 1874, Appendix, p. 529, No. LXXXI.

and high character should continue eligible for these Inquiries ([a]).

Practice as to appointing Assessors.

Having regard to considerations such as the above the general practice is to appoint a Naval Officer as third Assessor in cases where there has been loss of life, or which are in other respects important. In cases where no certificates are involved, the Secretary of State sometimes appoints a Naval Officer as one of the two Assessors without reference to loss of life.

The enactment in the Merchant Shipping Act, 1876, still remaining in force, having provided that a Formal Investigation shall be held with the assistance of an Assessor or Assessors of nautical, engineering, or other special skill or knowledge, and the Shipping Casualties Investigations Act, 1879, having, as before pointed out, further made it obligatory that when the certificate of a master, mate, or engineer, is likely to be involved, there shall be not less than two Assessors having experience in the Merchant Service, the mode of appointment or selection of Assessors for each Investigation remained to be prescribed by General Rules made by the Lord Chancellor under section 30 of the Merchant Shipping Act, 1876. Accordingly general rules have been framed to carry the above enactments into effect ([b]). For the purpose of such rules, the Secretary of State has directed that on and after the 31st of March, 1880, the list of Assessors approved by him shall be classified according to their qualifications as follows:—

General Rules for appointment of Assessors and classification by the Secretary of State thereunder.

"CLASS I.

Class I. Mercantile Marine Masters.

"(*a*.) Five years' service as a master in the Merchant Service, of which two years must have been service in command of a sailing ship, with a certificate of competency.

"(*b*.) Five years' service as a master in the Merchant Service, of which two years must have been service in command of a steamship, with a certificate of competency.

([a]) Opinions of the Wreck Commissioner, Stipendiary Magistrates and others collected on this subject in Parliamentary Paper, 407, Session 2, 1880.

([b]) See Additional Rules as to Investigations into Shipping Casualties of 20th December, 1879, Appendix, page 216.

"CLASS II.

Class II. Mercantile Marine Engineers.

"Five years' service as an engineer in the Merchant Service, and at the time of appointment, holding a first-class certificate of competency as an engineer ([a]).

"CLASS III.

Class III. Royal Navy.

"Rank of Admiral or Captain, and three years' service in command of one of Her Majesty's ships at sea, or rank of Staff-Commander and three years' service in that rank in one of Her Majesty's ships at sea.

"CLASS IV.

Class IV. Persons of Nautical, Engineering, or other special skill or knowledge.

"(*a.*) Such qualification as is in the opinion of the Secretary of State requisite for ordinary cases.

"(*b.*) Such qualification as is in the opinion of the Secretary of State requisite for special cases."

Much care has been taken in making the above classification and in framing the Additional Rules to give effect to the spirit and intention of the Shipping Casualties Investigations Act, 1879.

Rules relating to the appointment of Assessors.

The Rules relating to the appointment of Assessors are as follows :—

APPOINTMENT OF ASSESSORS.

Rule 4.

The power of appointing Assessors for Investigations into Shipping Casualties shall be vested in the Secretary of State ([b]).

Rule 5.

If any Investigation involves, or appears likely to involve, the cancelling or suspension of the certifiiate of a master, mate, or engineer, then, in order to satsfy the aforesaid statutory requirement of not less than two Assessors having experience in the Merchant Service there shall be appointed from the list not less than two Assessors from Class I. and Class II., or from either of those classes ([c]).

Rule 6.

Subject to any special appointment or appointments which the Secretary of State may think it expedient to make in any case where special circumstances appear to him to require a departure from

([a]) See Additional Rules as to Investigations into Shipping Casualties, 19th April, 1880, Appendix, page 219.

([b]) Rule 4, Appendix, page 218.

([c]) Rule 5, *Ibid.*

these Rules (the requirements of Rule 5 being always complied with), Assessors shall be appointed as follows:— **Rules relating to the appointment of Assessors.**

(1.) Where the Investigation involves, or appears likely to involve, the cancelling or suspension of the certificate of a master or mate, but not of an engineer, at least two Assessors shall be appointed from Class I.

(2.) Where the Investigation involves or appears likely to involve, the cancelling or suspension of the certificate of a master or mate of a sailing ship one at least of the Assessors shall be appointed from sub-section (*a*) of Class I., and where the Investigation involves, or appears likely to involve, the cancelling or suspension of the certificate of a master or mate of a steamship one at least of the Assessors shall be appointed from sub-section (*b*) of Class I.

(3.) Where the Investigation involves, or appears likely to involve, the cancelling or suspension of the certificate of an engineer, one at least of the Assessors shall be appointed from Class II. ([a]).

Rule 7.

The Board of Trade shall inform the Secretary of State when Assessors are required, and shall state from which of the aforesaid classes Assessors ought, in their opinion, to be appointed, in order to give due effect to the aforesaid classification and these Rules; but the Board of Trade shall not request the appointment of any individual Assessor ([b]).

Rule 8.

An appointment made by the Secretary of State of any Assessor or Assessors for an Investigation shall not be open to question on the ground that it was not in accordance with these Rules, or does not give full effect to the requirements of these Rules ([c]).

The above Rules are intended to carry into effect the following main principles:—

Principles embodied in the Rules.

1. To secure impartiality by vesting the appointment of Assessors in a a wholly independent authority.

([a]) Rule 6, Appendix, page 218.
([b]) Rule 7, Appendix, *Ibid.*
([c]) Rule 8, Appendix, page 219.

Principles embodied in the Rules.

2. To ensure that the qualifications of the Assessors shall as far as possible be adapted to the circumstances of each particular casualty. Thus, when the certificate of a master in a sailing ship is in question, one at least of the Assessors must be qualified by a certain period of service in a similar capacity; so also with regard to the master of a steamship, or an engineer. And Mercantile Marine Officers will be tried by a tribunal of which at least two are or have been of their own profession.

3. To secure sufficient elasticity in the Rules to allow of special selections by the Secretary of State when he may think it expedient to make them.

Services rendered by Assessors.

Observations have been made from time to time, and evidence was given before the Royal Commission on Unseaworthy Ships of 1873, questioning the utility of the services rendered by the Assessors in the conduct of Inquiries, but whether or not, or to whatever extent, those reflections may have been justified in regard to certain isolated cases, there can hardly be a doubt that the Assessors have supplied valuable and even indispensable aid in these Investigations. In tracing the causes of a casualty considerations of a highly technical nature frequently arise, which can only be dealt with by the special knowledge, judgment, and experience of persons possessing nautical, engineering or other special skill or knowledge. It is obvious that the majority of Magistrates cannot be expected to possess these qualifications, and that their reports might frequently be abortive and useless for want of them. A still more important consideration suggests itself in reference to that numerous class of Inquiries in which the certificate of a master or mate is in jeopardy, and in which therefore a miscarriage of justice would be likely to occur, without such a safeguard as the Assessors supply. It is not easy for an ordinary Magistrate, unacquainted with nautical affairs, to weigh with sound judgment the conduct of a ship's officer in circumstances of emergency, or to fairly estimate his professional obligations in the navigation of his vessel. In these cases the Assessors really perform the functions of a skilled jury, and undoubtedly supply an element of safety and trained experience in the constitution of the Court.

Choice between the Wreck Commissioner, Stipendiary Magistrates, and Justices to hold Formal Investigations how made.

The choice between the Wreck Commissioner, Stipendiary Magistrate, and Justices for the tribunal is exercised by the Board of Trade. Having regard to the purpose for which a Wreck Commissioner was appointed as declared by the Legislature ([a]), the Board of Trade have always assigned as many Inquiries as possible to be heard by him. He holds all Investigations which take place in London and also proceeds, at the request of the Board of Trade, when necessary, to any part of Great Britain ([b]) to hold an Inquiry. If the case cannot be heard by the Wreck Commissioner, then, in places where there is an experienced Stipendiary Magistrate, the Investigation is committed to the latter.

Occasionally it is impossible or inexpedient owing to the special circumstances of the case, or to the engagements of the Wreck Commissioner, to assign the Inquiry either to him, or to a Stipendiary Magistrate. It is then held before Justices, but such instances are comparatively infrequent.

In Scotland, however, there are no Stipendiary Magistrates whose services are available for Inquiries; and they are held either before the Wreck Commissioner, before Justices, or a Sheriff or Sheriff substitute under section 501 of the Merchant Shipping Act, 1854 ([c]).

In Ireland, cases are preferably remitted to Stipendiary Magistrates, and failing these, to Justices, by whom however no Inquiry has been heard for many years.

([a]) 39 & 40 Vict., c. 80, s. 29, post, page 62.

([b]) The appointment of a Wreck Commissioner being for the United Kingdom he may exercise jurisdiction in Ireland, though he has not yet been requested to hold any Inquiry in that country.

([c]) See post, page 59.

CHAPTER IV.

JURISDICTION AND POWERS OF COURTS OF FORMAL INVESTIGATION IN THE UNITED KINGDOM.

The jurisdiction of the Courts of Formal Investigation was some time since declared by Lord Blackburn (then Mr. Justice Blackburn) and Mr. Justice Mellor respectively to be "involved in a complicated number of sections," and was to be sought for in a "multitude of references some of them very special" (b). The apparent entanglement has since become considerably greater in consequence of the passing of the Merchant Shipping Act, 1876, and the Shipping Casualties Investigations Act, 1879. For the sake of clearness it will be convenient to discuss the provisions which govern the jurisdiction of Formal Investigations apart from the practice itself; the former will be the subject of this chapter, the latter will be examined in a subsequent part of the book, but in dealing with so general a subject as Jurisdiction it will be impossible to avoid a reference to much that must be inquired into elsewhere in greater detail.

The jurisdiction of the Courts has undergone from time to time changes in matter of detail, some of these alterations being as we have seen of great practical importance. The main outlines are, however, still such as they were under the Merchant Shipping Act of 1854. The Statutory Provisions now in force upon which the jurisdiction depends are the following:—

Statutory Provisions in force.

17 & 18 Vict., c. 104, sec, 242.

"The Board of Trade (c) may suspend or cancel the certificate (whether of competency or service) of

(b) *Ex parte* Ferguson, 6 Q.B. 280.

(c) The Court or tribunal by which the case is investigated or tried has been substituted for the Board of Trade by 25 & 26 Vict., c. 63, s. 23, sub-sec. 1. See post, page 60.

any master or mate in the following cases: (that is to say),

17 & 18 Vict., c. 104, sec. 242.

"If upon any Investigation conducted under the provisions contained in the eighth part of this Act, or upon any Investigation made by a Naval Court constituted as hereinafter mentioned, it is reported that the loss or abandonment of or serious damage to any ship or loss of life has been caused by his wrongful act or default:

sub-sec. 2. Board of Trade may cancel or suspend certificates in certain cases.

"And every master or mate whose certificate is cancelled or suspended shall deliver it to the Board of Trade or as it directs, and in default shall for each offence incur a penalty not exceeding fifty pounds; and the Board of Trade may at any subsequent time grant to any person whose certificate has been cancelled a new certificate, of the same or of any lower grade."

"In any of the cases following: (that is to say),

Sec. 432. Inquiries to be instituted in cases of wreck and casualty.

"Whenever any ship is lost, abandoned, or materially damaged on or near the coasts of the United Kingdom;

"Whenever any ship causes loss or material damage to any other ship on or near such coasts;

"Whenever by reason of any casualty happening to or on board of any ship on or near such coasts loss of life ensues;

"Whenever any such loss, abandonment, damage, or casualty happens elsewhere, and any competent witnesses thereof arrive or are found at any place in the United Kingdom,

"It shall be lawful for the Inspecting Officer of the Coast Guard or the principal Officer of Customs residing at or near the place where such loss, abandonment, damage, or casualty occurred, if the same occurred on or near the coasts of the United Kingdom, but if elsewhere, at or near the place where such witnesses as aforesaid arrive or are found, or can be conveniently examined, or for any other person appointed for the purpose by the Board of Trade, to to make Inquiry respecting such loss, abandonment, damage, or casualty; and he shall for that purpose have all the powers given by the first part of this Act to Inspectors appointed by the said Board."

Sec. 433. Formal Investigation before

"If it appears to such officer or person as aforesaid, either upon or without any such preliminary Inquiry

17 & 18 Vict., c. 104, sec. 433.

as aforesaid, that a formal investigation is requisite or expedient, or if the Board of Trade so directs, he shall apply to any two Justices or to a Stipendiary Magistrate to hear the case; and such Justices or Magistrate shall thereupon proceed to hear and try the same, and shall for that purpose, so far as relates to the summoning of parties, compelling the attendance of witnesses, and the regulation of the proceedings, have the same powers as if the same were a proceeding relating to an offence or cause of complaint upon which they or he have power to make a summary conviction or order, or as near thereto as circumstances permit; and it shall be the duty of such officer or person as aforesaid to superintend the management of the case, and to render such assistance to the said Justices or Magistrate as is in his power; and, upon the conclusion of the case, the said Justices or Magistrate shall send a report to the Board of Trade, containing a full statement of the case and of their or his opinion thereon, accompanied by such report of or extracts from the evidence, and such observations (if any) as they or he may think fit."

Sec. 435. Stipendiary Magistrate to be the Magistrate who is member of Local Marine Board, and to be paid.

"In places where there is a Local Marine Board, and where a Stipendiary Magistrate is a member of such Board, all such Investigations as aforesaid shall, whenever he happens to be present, be made before such Magistrate; and there shall be paid to such Magistrate in respect of his services under this Act such remuneration, whether by way of annual increase of salary or otherwise, as Her Majesty's Secretary of State for the Home Department, with the consent of the Board of Trade, may direct; and such remuneration shall be paid out of the Mercantile Marine Fund."

Sec. 436. Costs of such Investigations.

"The said Justices or Magistrate may make such order with respect to the costs of any such investigation or any portion thereof as they or he may deem just, and such costs shall be paid accordingly, and shall be recoverable in the same manner as other costs incurred in summary proceedings before them or him; and the Board of Trade may, if in any case it thinks fit so to do, pay the expense of any such Investigation, and may pay to such Assessor as aforesaid such remuneration as it thinks fit."

17 & 18 Vict., c. 104, sec. 437. Investigations in Scotland.

"In the case of any such Investigation as aforesaid to be held in Scotland, the Board of Trade may, if it so thinks fit, remit the same to the Lord Advocate to be prosecuted in such manner as he may direct ([a])."

Sec. 432. Master or mate may be required to deliver certificate to be held until close of Inquiry.

"Such Justices or Magistrate as aforesaid may, or in Scotland such person or persons as is or are directed by the Lord Advocate to conduct the Investigation may, if they or he think fit, require any master or mate possessing a certificate of competency or service whose conduct is called in question, or appears to them or him likely to be called in question in the course of such Investigation, to deliver such certificate to them or him ([b]), and they or he shall hold the certificate so delivered until the conclusion of the Investigation, and shall then either return the same to such master or mate, or, if their report is such as to enable the Board of Trade ([c]) to cancel or suspend such certificate under the powers given to such Board by the third part of this Act, shall forward the same to the Board of Trade to be dealt with as such Board thinks fit; and if any Master or Mate fails so to deliver his certificate when so required, he shall incur a penalty not exceeding fifty pounds."

Sec. 501. Provision as to certain terms in Scotland.

"All matters and things that may in pursuance of the eighth part of this Act be done by or to any Justice, or any two Justices, may in Scotland be done also by or to the Sheriff of the county, including the Sheriff substitute."

Sec. 519. Stipendiary Magistrate, power of.

"Any Stipendiary Magistrate shall have full power to do alone whatever two Justices of the Peace are by this Act authorised to do."

Sec. 521. Jurisdiction over ships lying off the coasts.

"In all cases where any disaster within which any Court or Justice of the Peace or other Magistrate has jurisdiction, either under this Act or under any other Act or at common law, for any purpose whatever, is situate on the coast or any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, every such Court, Justice of the Peace, or Magistrate shall have juris-

([a]) The remainder of this section has been repealed. Sec. 39 & 40 Vict., c. 80, s. 45.

([b]) Such delivery cannot now be required unless the certificate is suspended or cancelled. 42 & 43 Vict., c. 72, s. 3, sub-sec. 4. See post, page 65.

([c]) See 25 & 26 Vict., c. 63, s. 23, sub-sec. 1, page 60, and sec. 24, page 61.

17 & 18 Vict., c. 104, sec. 521.

diction over any ship or boat being on or lying or passing off such coast, or being in or near such bay, channel, lake, river, or navigable water as aforesaid, and over all persons on board such ship or boat or for the time being belonging thereto, in the same manner as if such ship, boat, or persons were within the limits of the original jurisdiction of such Court, Justice, or Magistrate."

25 & 26 Vict., c. 63, sec. 23.

"The following Rules shall be observed with respect to the Cancellation and Suspension of Certificates, that is to say:

Power of cancelling certificate to rest with the Court which hears the case.

Sub-sec. 1.

"(1.) The power of cancelling or suspending the certificate of a master or mate by the 242nd section of the principal Act conferred on the Board of Trade shall (except in the case provided for by the fourth paragraph of the said section ([a])) vest in and be exercised by the Local Marine Board, Magistrates, Naval Court, Admiralty Court, or other Court or Tribunal by which the case is investigated or tried, and shall not in future vest in or be exercised by the Board of Trade:

Sub-sec. 2.

"(2.) Such Power shall extend to cancelling or suspending the certificates of engineers in the same manner as if 'certificated engineer' or 'certificated engineers' were inserted throughout such section after 'master' or 'masters':

Sub-sec. 3.

"(3.) Every such Board, Court, or Tribunal shall at the conclusion of the case, or as soon afterwards as possible, state in open Court the decision to which they may have come with respect to cancelling or suspending certificates, and shall in all cases send a full report upon the case, with the evidence, to the Board of Trade, and shall also, if they determine to cancel or suspend any certificate, forward such certificate to the Board of Trade with their report:

Sub-sec. 4.

"(4.) It shall be lawful for the Board of Trade, if they think the justice of the case require it, to re-issue and return any certificate which has been cancelled or suspended, or shorten the time for which it is suspended, or grant a new certificate of the same or any lower grade in place of any certificate which has been cancelled or suspended:

Sub-sec. 6.

"(6.) ([b])No certificate shall be cancelled or suspended

([a]) The excepted provision is as follows:—"If he is shown to have been convicted of any offence."

([b]) Sub-sec. 5 repealed by 39 & 40 Vict., c. 80, s. 45.

under this section unless a copy of the report or a statement of the case upon which the investigation is ordered has been furnished to the owner of the certificate before the commencement of the Investigation, nor, in the case of Investigations conducted by Justices or a Stipendiary Magistrate, unless one Assessor at least expresses his concurrence in the report."

25 & 26 Vict., c. 63.

"Every master or mate or engineer whose certificate is (a) suspended or cancelled in pursuance of this Act shall, upon demand of the Board, Court, or Tribunal by which the case is investigated or tried, deliver his certificate to them, or, if it is not demanded by such Board, Court, or Tribunal, shall, upon demand, deliver it to the Board of Trade, or as it directs, and in default shall for each offence incur a penalty not exceeding fifty pounds."

Sec. 24. Certificate to be delivered up

"Nothing in the third section of the Act passed in the twentieth and twenty-first years of the reign of Her present Majesty, chapter forty-three, except so much thereof as provides for the payment of any fees that may be due to the Clerk of the Justices, shall be deemed to apply to extend to any proceeding under the direction of the Board of Trade, or under or by virtue of the provisions of the principal Act or this Act, or any Act amending the same."

Sec. 65.

"In every case of collision between two vessels it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any), to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any), such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision; and also to give to the master or person in charge of the other vessel the name of his own vessel, and of her port of registry, or of the port or place to which she belongs, and also the names of the ports and places from which and to which she is bound.

36 & 37 Vict., c. 85, sec. 16. Duties of masters in case of collision.

"If he fails so to do, and no reasonable cause for

(a) The words "or is to be" were repealed by 42 & 43 Vict., c. 72, s. 3, sub-sec. 4, see post, page 65.

39 & 40 Vict., c. 80.

such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default.

"Every master or person in charge of a British vessel who fails, without reasonable cause, to render such assistance or give such information as aforesaid shall be deemed guilty of a misdemeanor, and if he is a certificated officer an inquiry into his conduct may be held and his certificate may be cancelled or suspended."

Sec. 29. Appointment, duties, and powers of Wreck Commissioners for investigating shipping casualties.

"For the purpose of rendering Investigations into shipping casualties more speedy and effectual it shall be lawful for the Lord High Chancellor of Great Britain to appoint from time to time some fit person or persons to be a Wreck Commissioner or Wreck Commissioners for the United Kingdom, so that there shall not be more than three such Commissioners at any one time, and to remove any such Wreck Commissioner; and in case it shall become necessary to appoint a Wreck Commissioner in Ireland the Lord Chancellor of Ireland shall have the appointment and the power of removal of such Wreck Commissioner.

"It shall be the duty of a Wreck Commissioner, at the request of the Board of Trade, to hold any Formal Investigation into a loss, abandonment, damage, or casualty (in this Act called a shippngi casualty) under the eighth part of the Merchant Shipping Act, 1854, and for that purpose he shall have the same jurisdiction and powers as are thereby conferred on two Justices, and all the provisions of the Merchant Shipping Acts, 1854 to 1876, with respect to Investigations conducted under the eighth part of the Merchant Shipping Act, 1854, shall apply to Investigations held by a Wreck Commissioner."

Sec. 30. Assessors and rules of procedure on Formal Investigations into shipping casualties.

"The Wreck Commissioner, Justices, or other Authority holding a Formal Investigation into a shipping casualty shall hold the same with the assistance of an Assessor or Assessors of nautical engineering or other special skill or knowledge, to be appointed(a) by the Commissioner, Justices, or Authority out of a list of persons for the time being approved for the purpose by a Secretary of State.

(a) The mode of appointment has been altered by 42 & 43 Vict., c. 72, s. 3, sub-sec. 2. See post, page 65.

"The Commissioner, Justices, or Authority(*), when of opinion that the Investigation is likely to involve the cancellation or suspension of the certificate of a master or mate, shall, where practicable, appoint a person havingexperience in the Merchant Service to be one of the Assessors.

39 & 40 Vict., c. 80, s. 30.

"Each Assessor shall either sign the report made on the Investigation, or report to the Board of Trade his reasons for his dissent therefrom.

"The Lord High Chancellor of Great Britain may from time to time, with the consent of the Treasury so far as relates to fees, make, and when made revoke, alter, and add to general rules for carrying into effect the enactments relating to Formal Investigations into shipping casualties, and in particular with respect to the summoning of Assessors, the procedure, the parties, the persons allowed to appear, the notice to such parties and persons or to persons affected, and the amount and application of fees.

"All such rules, while in force, shall have effect as if enacted in this Act.

"Every Formal Investigation into a shipping casualty shall be conducted in such manner that if a charge is made against any person that person shall have an opportunity of making a defence."

Sec. 31. Power for Wreck Commissioner to institute examination with respect to ships in distress under 17 & 18 Vict., c. 104, s. 448.

"A Wreck Commissioner may, at the request of the Board of Trade, by himself, or by some deputy approved by the Board of Trade, institute the same examination as a Receiver of Wreck under section four hundred and forty-eight of the Merchant Shipping Act, 1854, and shall for that purpose have the powers by that section conferred on a Receiver of Wreck:"

Sec. 32. Power to hold Inquiries or Formal Investigations as to stranded and missing ships.

"In the following cases—

"(1.) Whenever any ship on or near the coasts of the United Kingdom or any British ship elsewhere has been stranded or damaged, and any witness is found at any place in the United Kingdom, or

"(2.) Whenever a British ship has been lost or is supposed to have been lost, and any evidence can be obtained in the United Kingdom as to the circumstances under which she proceeded to sea or was last heard of,

(*) This provision has been amended by 42 & 43 Vict., c. 72, sec. 3, sub-secs. 2 & 3. See post, page 65.

39 & 40 Vict., c. 80.

the Board of Trade (without prejudice to any other powers) may, if they think fit, cause an inquiry to be made or Formal Investigation to be held, and all the provisions of the Merchant Shipping Acts, 1854 to 1876, shall apply to any such inqury or Investigation as if it had been made or held under the eighth part of the Merchant Shipping Act, 1854."

Sec. 33. Place of Investigation.

"A Formal Investigation into a shipping casualty may be held at any place appointed in that behalf by the Board of Trade, and all enactments relating to the authority holding the Investigation shall, for the purpose of the Investigation, have effect as if the place so appointed were a place appointed for the exercise of the ordinary jurisdiction of that authority."

42 & 43 Vict., c. 72, sec. 2, sub-sec. 1. Re-hearing of and appeal against Investigation into shipping casualty or misconduct of officer.

"Where an Investigation into the conduct of a master, mate, or engineer, or into a shipping casualty, has been held under the Merchant Shipping Act, 1854, or any Act amending the same, or under any provision for holding such Investigations in a British possession, the Board of Trade may, in any case, and shall, if new and important evidence which could not be produced at the Investigation has been discovered, or if for any other reason there has in their opinion been ground for suspecting a miscarriage of justice, order that the case be re-heard, either generally or as to any part thereof, and either by the Court or authority by whom it was heard in the first instance, or by the Wreck Commissioner, or in England or Ireland by a Judge of Her Majesty's High Court of Justice exercising jurisdiction in Admiralty cases, or in Scotland by the Senior Lord Ordinary, or any other Judge in the Court of Session whom the Lord President of that Court may appoint for the purpose, and the case shall be so re-heard accordingly." (*)

Sec. 3. *Sub-sec.* 1. Rules as to Investigations into shipping casualties and misconduct of officers.

"(1.) The list of persons approved as Assessors for the purpose of Formal Investigations into shipping casualties shall be in force for three years only, but persons entered in any such list may be approved for any subsequent list. The list of those persons in force at the passing of this Act shall continue in force until the end of the year One thousand eight hundred and eighty, but nothing in this section shall affect the power of the Secretary

(*) The remainder of the section relates to Appeals, and will be found at pages 183 and 184.

of State to withdraw his approval of any name on any such list or to approve of any additional name.

42 & 43 Vict., c. 72, sec. 3.

"(2) The Assessor or Assessors for each such Investigation shall, instead of being appointed by the commissioner, justices, or other authority holding the Investigation, be appointed in such manner and according to such regulations as may be from time to time prescribed by general rules made under section thirty of the Merchant Shipping Act, 1876.

Sub-sec. 2.

"(3) Where any such investigation involves or appears likely to involve any question as to the cancelling or suspension of the certificate of a master, mate, or engineer it shall be held with the assistance of not less than two Assessors having experience in the Merchant Service.

Sub-sec. 3.

"(4) A master, mate, or engineer shall not be required to deliver his certificate under section four hundred and thirty-eight of the Merchant Shipping Act, 1854, or section twenty-four of the Merchant Shipping Act, 1862, unless the certificate is suspended or cancelled, and the words 'or is to be' in the latter of those sections are hereby repealed.

Sub-sec. 4.

"(5) Investigations into shipping casualties shall be held in some town hall, assize or County Court, public building, or in some other suitable place to be determined according to general rules made for the purpose by the Lord High Chancellor of Great Britain, and unless no other suitable place is in the opinion of the Board of Trade available, shall not be held in a Court ordinarily used as a Police Court."

Sub-sec. 5.

Limits of jurisdiction of Justices and Stipendiary Magistrates as to place.

The Justices or Stipendiary Magistrate who formerly investigated a casualty could not, of course, sit outside the local limits of their jurisdiction, nor could they take cognizance of casualties which occurred beyond those limits (a). The Justices or Stipendiary Magistrate who could therefore under the 433rd section be asked to hold an Investigation, must have been taken from among those within whose jurisdiction (as extended by the 521st section) the event which gave rise to the Investigation took place, or in other words, the event occurred on the

(a) *In re Peerless*, Lush, 30, 1 Q.B. 143; *Helier* v. *Hundred de Benhurst*, 4 Cro. 211; *Reg.* v. *Stainforth*, 11 Q.B. 66: *Ex parte Green*, 7 Q.B.D. 273; *Combe* v. *Delabere*, 22 Ch. Div. 316.

Limits of Jurisdiction of Justices and Stipendiary Magistrates.

happening of which the power to hold the Inquiry depended. In those cases under the 432nd section of the Merchant Shipping Act of 1854, and the 32nd section of the Merchant Shipping Act, 1876, where the presence of witnesses or the procurability of evidence is made the circumstance upon which the holding of an Investigation is to be founded, little difficulty can occur, as in practice, the witnesses will always be, or the evidence will be, procurable, within the local jurisdiction of some Bench of Justices or some Stipendiary Magistrate. But in those cases where the happening of the casualty is the event which gives occasion to the jurisdiction, questions may arise. Justices have in general, and except for certain special purposes, no jurisdiction beyond low-water mark ([a]), and it is obvious that of the numerous casualties which happen "on or near the coasts of the United Kingdom," a great number will (as those words have been interpreted by the Courts of this country) ([b]) take place beyond that limit. When the ship to which the casualty occurs touches the shore above low-water mark no difficulty can arise. The other cases are, it is submitted, sufficiently provided for by section 521 of the Merchant Shipping Act of 1854 ([c]). The ship, when the casualty occurs, must be on, or lying, or passing off the coast, or be in or near a bay, channel, lake, river, or other navigable water, and then the Justices or Stipendiary Magistrate, whose district is situate on that coast, or abuts on, or projects into that bay, channel, lake, river, or other navigable water, will be able to act. As the Wreck Commissioner is, by section 29 of the Merchant Shipping Act of 1876, simply substituted for two Justices who could have sat on the Investigation, and is invested with their powers, the above considerations apply with equal force to him.

So far, however, as the common law required that the Justices or Stipendiary Magistrate should actually sit while holding the Investigation within the territorial limits of their jurisdiction, the law has been modified by statutory provision, though in all

([a]) *Embleton* v. *Brown*, 30 L.J. M.C., 1 Com. Dig. "Navigation," A
([b]) The *Leda*, 1 Swab. 40; the *Mac.*, 7 Prob. Div., 126, *ante*, page 38.
([c]) *Ante*, page 59.

other respects (such as determining which particular bench or set of Justices may act) the above remarks are still correct. Before the passing of the Merchant Shipping Act, 1876, no particular place or mode of selection had been prescribed. It has been seen that by section 433 of the Merchant Shipping Act, 1854, it was provided that the officer or person authorized to hold a preliminary Inquiry should upon or without any such Inquiry, if the Board of Trade so directed, apply to *any* two Justices or to a Stipendiary Magistrate to hear the case, and the selection of the place of investigation was in practice invariably made by the Board of Trade. A more direct recognition of the discretion of the Board of Trade in this respect has now been made by the express enactment above quoted (a), and the power of selection is absolutely vested in the Board of Trade, who alone are in possession of the requisite materials for forming a judgment upon the matter. The place selected by them becomes accordingly "a place appointed for the exercise of the ordinary jurisdiction" of the investigating authority, that is to say, in contemplation of law the place is physically situate within the district of the authority.

Selection of place of Investigation.

Selection now vested in the Board of Trade.

The place of investigation obviously depends upon a number of considerations varying with the circumstances of the particular case. The place of the casualty for instance, the port at which the master, officers, or a majority of the crew, may arrive or be found; the residences of the other witnesses, of the owners, and other usual parties to the Investigation; the degree of local or general importance or local prejudice attaching to the subject of inquiry, and considerations of expense, are all elements which (among others) have to be taken into account. The Board of Trade will no doubt cause as many Investigations as possible to be heard in London on grounds of general convenience, but when this cannot properly be done the Inquiries will, as heretofore, be held in the neighbourhood of the casualty, or at such other port as may be deemed most suitable.

Governed by various considerations.

(a) 39 & 40 Vict., c. 80, s. 33, *ante*, page 64.

Advantage of Local Inquiries.

In certain cases there is an obvious advantage in a local Inquiry. Coal explosions, or cases of spontaneous combustion, for instance, most frequently occur among cargoes shipped at ports in South Wales and other ports from which coals are exported in large quantities, and the investigation of the causes of such casualties, whether due, as in the former case, to want of surface ventilation, or, as in the latter case, to the properties of certain descriptions of coal, and to the condition in which it was shipped, cannot fail to call forth a greater amount of interest, and to direct attention in a more marked manner to measures of precaution, if the Inquiry is held in the midst of the class of persons who are most concerned in the business of coal shipment.

As a general rule the majority of the witnesses arrive at or belong to the larger seaports in several of which there is a resident Stipendiary Magistrate. A considerable proportion of the local Inquiries, as distinguished from London cases, have accordingly been held at Liverpool, Cardiff, Swansea, Glasgow, Dublin, Cork, Belfast, Hull, Middlesborough, and the Tyne ports.

Inquiries not to be held in Police Courts.

In connection with the place of Investigation a recent legislative enactment requires some notice. Objection ([a]) has constantly been made by ship-owners and ships' officers to the holding of Inquiries in Police Courts, by reason of the criminal associations connected therewith. It is obvious that a more complete separation of this kind of business from the the ordinary proceedings in a Police Court may tend to avoid some loss of time and be of advantage to all concerned. Inquiries had already been held by Stipendiary Magistrates at certain outports in some other public building than in their own Courts, and the Wreck Commissioner has uniformly avoided sitting in a Police Court whenever another Court has been available. The late President of the Board of Trade (Lord Sandon) devoted his attention to this matter, and at his

([a]) An objection of this kind was urged before the Royal Commissioners on Unseaworthy Ships. Final Report and Evidence, vol. II., 1874, page 310.

instance the provision in the Shipping Casualties Investigations Act, 1879, sec. 3, sub-sec. 5 (*ante*, page 65) was made.

Jurisdiction is largely controlled by procedure which practically limits its exercise.

Jurisdiction, particularly in the case of inferior tribunals whose powers are limited, is largely controlled by procedure; the means and manner of asserting the authority, which properly belong to the head of procedure, become in fact practical bounds to the exercise of the jurisdiction. It is therefore necessary in this place to glance shortly at the subject of procedure.

Provisions as to regulating the procedure.

Prior to the passing of the Merchant Shipping Act, 1876, the provisions for regulating the procedure at Formal Investigations were, in substance, those contained in the above-mentioned section 433 of the Merchant Shipping Act, 1854, whereby it was enacted that for the purpose of hearing and trying the Investigation, so far as related to the summoning of parties, compelling the attendance of witnesses and the regulation of the proceedings, the Justices or Stipendiary Magistrate should have the same powers as if the same were a proceeding relating to an offence or cause of complaint upon which they or he had power to make a summary conviction or order or as near thereto as circumstances permitted (a). The proceedings at a Formal Investigation were accordingly regulated by Sir John Jervis's Act, 11 & 12 Vict., c. 43, so far as this Act governed the matters above-mentioned. In order, however, to give greater practical effect to the powers conferred upon the Courts of Inquiry by the Merchant Shipping Acts, 1854 to 1876, and at the same time to introduce a greater uniformity of procedure, not only in England but throughout the United Kingdom, the Legislature provided in the Merchant Shipping Act, 1876, that the Lord Chancellor might from time to time, make, and when made, revoke, alter, and add to general rules for carrying into effect the enactments relating to Formal Investigations into shipping casualties, and in particular with respect to the summoning of Assessors, the procedure, the parties, the persons allowed to appear, the notice to such parties and persons, or to persons affected, and the amount and

Before the passing of the Merchant Shipping Act, 1876, the procedure was as nearly as possible the same as in ordinary cases of summary proceedings before Justices.

Power to the Lord Chancellor to make General Rules as to procedure.

(a) 17 & 18 Vict., c. 104, s. 433, *ante*, page 57.

application of fees. All such rules while in force are to have effect as if enacted in the Act [a].

General Rules of 1876, 1878, 1879 and 1880.

The wide scope of the power thus conferred upon the Lord Chancellor will be at once apparent, and under the above provisions General Rules for Shipping Investigations were made and published in 1876, but were repealed upon the substitution of new Rules in 1878. Additional Rules have also been made under the joint provisions of the above section and of the Shipping Casualties Investigations Act, 1879 [b].

Division of the remaining subject-matter of this chapter.

The most convenient method of discussing the remaining subject-matter of this chapter will be under the following heads, viz.:—

A. The casualties which may be made the subject of a Formal Investigation.

B. The persons who are subject to the authority of Courts of Formal Investigation and the nature and extent of such authority.

C. The Report to the Board of Trade.

A.—The Casualties which may be made the Subject of a Formal Investigation.

Classification of casualties.

The events which give rise to the jurisdiction may be conveniently classified in the following manner:—

If on or near the coasts.

If the event happens on or near the coasts of the United Kingdom

(*a*) a ship must have been lost, abandoned, or materially damaged;

(*b*) or a ship must have caused loss or material damage to another ship;

(*c*) or a ship must have been stranded or damaged, and a witness must be found at some place in the United Kingdom;

(*d*) or a ship must have met with a casualty to or on board of it from which loss of life has ensued.

If elsewhere.

If the event has occurred elsewhere than on or near such coasts

(a) 39 & 40 Vict., c. 80, s. 30, *ante*, page 63.

(b) 42 & 43 Vict., c. 72. See Rules post, page 106, and in Appendix, pp. 211, 216, 219.

(*a*) A ship must have been lost, abandoned, or materially damaged, and competent witnesses must have arrived or be found at some place in the United Kingdom;

(*b*) or a ship must have met with a casualty to or on board of it from which loss of life ensued, and competent witnesses must have arrived or be found at some place in the United Kingdom;

(*c*) or a British ship must have been stranded or damaged ([a]) and a witness must be found at some place in the United Kingdom.

Or lastly, if the case does not come within the above classes, a British ship must have been lost or supposed to have been lost, and evidence must be obtained in the United Kingdom as to the circumstances under which she proceeded to sea or was last heard of.

These conditions do not require much explanation or comment, but there are some points which are worthy of notice in greater detail.

"On the coasts of the United Kingdom."

The meaning of the words "on the coasts of the United Kingdom" has already been discussed in a previous chapter ([b]), and it has been shown that they have received judicial interpretation. They do not import that the ship should actually have grounded, or touched the dry land or ground, or be literally on the coast, but it is sufficient if the casualty has occurred when the ship was near or in the vicinity of the coasts of the United Kingdom ([c]).

"Nearness" depends on circumstances.

It is submitted that no absolute rule can be laid down as to the degree of nearness or vicinage, but that this must in every case depend upon the particular circumstances attendant thereon.

The following questions also require notice:—

I. What is a "ship?"

II. What is a "British ship?"

III. How far do the enactments apply to foreign ships?

([a]) A formal investigation may be held in cases of only slight damage, but unless a ship is materially damaged the certificates held by her officers cannot be suspended or cancelled. *Ex parte Story*, 47 L.J., Q.B. 266, Q.B.D. 166.

([b]) See *ante*, page 38.

([c]) The *Leda*, 1 Swab. 40; The *Mac*, 7 Prob. Div. 126.

I. *What is a "Ship?"*

Definition of a "Ship."

The word "ship" is defined in the second Section of the Merchant Shipping Act, 1854, as including "every description of Vessel used in Navigation not propelled by Oars." It will be oberved that this is one of that class of definition, so frequently found in modern Acts of Parliament, by which the meaning of an expression is not confined or exclusively applied to a certain set of things, but is extended to matters to which it either does not naturally apply, or to which its application is doubtful, and the popular and ordinary meaning is nevertheless retained. In a modern case (a) in which a fishing coble was held to be a "ship" Lord Blackburn (then Blackburn, J.) used the following language :—

"It is said on behalf of the Master and Mate that the fishing coble cannot be a 'ship.' She is 24 feet long; she is not entirely decked over; she has two masts, and a rudder, which are removeable, and she may be propelled by four oars. She goes out well to sea; and though the oars are used to get her out of harbour, they are merely auxiliary to the use of sails. It is said on behalf of the Board of Trade that that is a 'ship.' The chief argument against that proposition is by referring to the interpretation clause (s. 2 of 17 & 18 Vict., c. 104), which says '"ship" shall include every descriptionof vessel used in navigation not propelled by oars.' And the argument against the proposition is one which I have heard very frequently, viz., where an Act says certain words shall include a certain thing, that the words must apply exclusively to that which they are to include. That is not so, the definition given of 'ship' is in order that 'ship' may have a more extensive meaning. Whether a 'ship' is propelled by oars or not, it is still a 'ship,' unless the words 'not propelled by oars,' exclude all vessels which are ever propelled by oars. Most small vessels rig out something to propel them, and it would be monstrous to say that they are not Ships. What then is the meaning of the word 'ship' in this Act? It is this, that every vessel that substantially goes to

(a) *Ex parte Ferguson*, 6 Q.B. 280.

Definitions by Lord Blackburn and Sir R. Phillimore.

sea is a 'Ship.' I do not mean to say that a little boat going out for a mile or two to sea would be a 'Ship;' but where it is its business really and substantially to go to sea, if it is not propelled by oars, it shall be considered a 'ship' for the purpose of this Act. Whenever the vessel does go to sea, whether it be decked or not decked, or whether it goes to sea for the purposes of fishing, or anything else, it would be a Ship. I take it that this was what the Justices thought. The facts stated are, that this vessel, though of small size (of only ten tons burthen and only twenty-four feet long), yet goes out twenty or thirty miles to sea—does go there almost entirely with sails, does stay out many hours, as the Affidavits state, and I think it is probable that it goes out for days and nights. This makes it impossible to say that it is not a sea-going vessel, and consequently a 'Ship' coming within the Act without the aid of the interpretation clause. I do not go into the clauses ([a]) which Mr. Cave has so ably put before us. I prefer to come to the conclusion I have without them. Of course these clauses fortified me and made me think that my interpretation is correct."

In a later case ([b]), Sir R. Phillimore, apparently struck by the stress laid by Lord Blackburn upon the fact, that the fishing coble went to sea, seems to have come to the conclusion that before a vessel could be a "ship" within the meaning of the Merchant Shipping Act it was necessary that she should be a sea-going vessel. He accordingly held that a lighter of 60 tons burden which was proceeding under sail up the River Thames was not a "ship." This statement of the law is one from which the Court of Appeal in the case of the *Mac* ([c]) seems to have impliedly expressed its dissent.

The question there arose in connection with a barge which was not provided with any means of propulsion, but was used for dredging purposes, and was generally towed when in actual use. This hopper barge was considered by the Court of Appeal

([a]) These clauses were 25 & 26 Vict., c. 63, ss. 25, 27, 28, 29, 30.
([b]) The *C. S. Butler*, 4, A. & E. 178.
([c]) The *Mac*, 7 Prob. Div. 126. See *ante*, page 71.

Definitions by Lord Coleridge and Lord Justice Brett.

to be a "ship." The language used by the Lords Justices is instructive, and it is worth while to state it in full. Lord Coleridge, C.J., said:—"I think it immaterial to consider whether the hopper-barge was used in navigation within the meaning of the Merchant Shipping Act 1854, section 2, because that enactment directs that the word 'ship' shall 'include every description of vessel used in navigation not propelled by oars.' It does not exclude other meanings of the word. I agree that to hold that a mud barge is a ship may seem to go very far in the way of interpretation; but we must not overlook the consequences of holding that a hopper barge is not a 'ship.' She could take men on board. She falls within the definition cited in Todd's Johnson's Dictionary of the word 'ship' from Horne Tooke, namely, 'formatum aliquid, in contradistinction from a raft for the purpose of conveying merchandize, &c., by water, protected from the water and the weather.' Although this may not be the definition of Johnson; it is the definition of a great master of language; and I think that it applies to the present case. The learned Judge seems to have decided upon the ground that the interpretation clause excluded every meaning besides the definition therein stated; he fails to deal with the question whether the hopper barge may not be considered a 'ship' in the ordinary and popular sense of the word. I decide that she is a Ship within the common meaning of that term."

Brett, L. J., said: "In popular language, ships are of different kinds; barques, brigs, schooners, sloops, cutters. The word includes anything floating in or upon the water built in a particular form and used for a particular purpose. In this case the vessel, if she may be so called, was built for a particular purpose, she was built as a hopper-barge; she has no motive power, no means of progression within herself. Towing alone will not conduct her, she must have a rudder, and therefore she must have men on board to steer her. Barges are vessels in a certain sense; and as the word 'ship' is not used in a strictly nautical meaning, but is used in a popular meaning, I think that this hopper-barge is a 'ship.' She is not propelled by oars. The

Definition by Lord Justice Cotton.

interpretation clause does not limit the meaning, it enlarges it. This hopper-barge is used for carrying men and mud; she is used in navigation; for to dredge up and carry away mud and gravel, is an act done for the purposes of navigation. Suppose that a saloon barge capable of carrying 200 persons, is towed down the River Mersey in order to put passengers on board vessels lying at the mouth, she would be used for purposes of navigation, and I think it equally true that the hopper barge was used in navigation." Cotton, L. J., said, "The interpretation clause does not confine the meaning of the word, it does not confine it simply to what is used in navigation. I think that the hopper-barge is a 'ship' both within and without the interpretation clause. 'Ship' is a general term for artificial structures floating on the water; this is plain upon looking at the meanings given in Johnson's Dictionary, and it is to be observed that one of the meanings of 'boat' is therein stated to be 'a ship of a small size.' I think that the proper meaning is 'something hollowed out.' Some expressions of Blackburn, J., *in ex parte Ferguson* (a) may appear to support a different view; that learned Judge seems at first sight to have been of opinion that a 'ship' meant a sea-going vessel; but I think that the remarks which he made must be read with reference to the subject-matter before him, and that he was merely explaining that the vessel in question was a 'ship.' It is plain to my mind, that in order to be a 'ship' within the Merchant Shipping Act, 1854, a vessel need not be seagoing: it is only necessary to refer to section 19 of that statute, which provides that British Ships must be registered, except 'Ships not exceeding fifteen tons burden employed solely in navigation on the rivers or coasts of the United Kingdom, or on the rivers or coast of some British Possession.' I think that this shows that the hopper-barge is a 'Ship' within the Act. The question cannot depend on the circumstance whether she carries a cargo from port to port. She was propelled by towing, and she carried mud with a crew on board."

In the case of the *Andalusian* (b), a newly launched

(a) *Ex parte Ferguson*, 6 Q.B., 280.
(b) The *Andalusian*, 3 Prob. Div., 182.

ship which had not yet on board her masts, sails, and steam machinery, was determined to be a "ship."

It must now therefore be considered settled that vessels which in popular language would be termed Ships, are Ships within the meaning of the Merchant Shipping Acts; and also, that whether or not in nautical language the word would be applied to any vessel is immaterial, but that the criterion, apart from the extended meaning given in the definition clause is, whether in the estimation of the public in general the thing is a 'Ship.'"

II.—*What is a "British Ship?"*

What is a British Ship.

In some instances the power of holding an investigation depends upon the ship to which the casualty has occurred being British. What is a "British ship" is therefore a pertinent question. The Merchant Shipping Act of 1854, includes no definition of the expression, but contains a provision which will, for practical purposes, in the cases likely to arise, sufficiently define it; this is as follows:—

17 & 18 Vict., c. 104, s. 18.

"No ship shall be deemed to be a British ship unless she belongs wholly to owners of the following description; that is to say;—

"(1.) Natural born *British* subjects:

Provided that no natural born subject who has taken the oath of allegiance to any foreign Sovereign or State shall be entitled to be such owner as aforesaid, unless he has subsequently to taking such last-mentioned oath taken the oath of allegiance to Her Majesty, and is and continues to be during the whole period of his so being an owner resident in some place within Her Majesty's dominions, or if not so resident, member of a British factory, or partner in a house actually carrying on business in the United Kingdom or in some other place within Her Majesty's dominions:

"(2.) Persons made denizens by letters of denization, or naturalized by or pursuant to any Act of the Imperial Legislature, or by or pursuant to any Act or Ordinance of the proper legislative authority in any British possession:

"Provided that such persons are and continue to be

during the whole period of their so being owners resident in some place within Her Majesty's dominions, or if not so resident, members of a British factory, or partners in a house actually carrying on business in the United Kingdom or in some other place within Her Majesty's dominions, and have taken the oath of allegiance to Her Majesty subsequently to the period of their being so made denizens or naturalized:

"(3.) Bodies corporate established under, subject to the laws of, and having their principal place of business in the United Kingdom or some British possession."

Effect of the above enactment.

Upon this clause it is to be observed that while it provides that certain requisites shall be possessed by a shipowner before his ship can be a "British ship," yet it does not imply that every ship whose owners comply with those requisites shall be a "British ship." In other words, though by the section ships may be prevented from being treated as "British ships" which at common law would have been such, yet no ship which is not at common law a "British ship" will, under this enactment, become such. What is at common law a "British Ship" is a question wrapt in some obscurity, and any adequate discussion of the subject would involve an enquiry which would be out of place in this work (a). For the purposes of warranties of a ship's nationality in commercial contracts, such as charter parties, and marine insurances, and for the purpose of determining a ship's national character during a time of war, it would seem from the authorities, that it is not the owner's nationality or allegiance that is to be regarded, but his domicile, or perhaps more accurately, his commercial domicile (b). Thus the ships of British born subjects commercially domiciled in an enemy's country, although these have not put off their British character, or taken an oath of allegiance

"British ship" at common law.

National character depends upon domicile of owner.

(a) The Navigation laws, commencing in the reign of Charles II. (12 Car. II., c. 18) which are all now repealed, have a considerable bearing on the point.

(b) The *Indian Chief*, 3 Rob. Ad. 12; The *Nayade*, 4 Rob. Ad. 251. *Marryat* v. *Wilson*, 8 T.R. 31; In Error 1 B. & P. 430; *McConnell* v. *Hector*, 3 B. & P.113; *Tabbs* v. *Bendelack*, 4 Esp. 108, 3 B. & P. 207; Arnould on Marine Ins., pp. 123 *et seq.*; As to what is "commercial domicile" see Dicey on Domicile p. 343; See also Lord Westbury's Judgment in *Udny* v. *Udny*, 1 H.L. *Sc.* C. 441.

to the foreign power. have been held not to be British ships ([a]). In such a case the requirements of the above section would have been complied with, yet it is submitted such ships would not now at common law be British ships. So too, the ships of foreigners commercially domiciled in British territory have been held to be subject to the burdens and entitled to the advantages of English nationality.

Foreign shipowners now excluded.

Foreign shipowners are now excluded by the 18th section of the Merchant Shipping Act, 1854 ([b]). The provisions in that section may be usefully compared with the provisions of the Naturalization Act, 1870 ([c]). The flag a ship flies, or the papers she carries, are not conclusive of nationality, they are evidence thereof only. The provisions of section 18 of the Merchant Shipping Act, 1854, may also be compared with sections 5, 9, 12 and 23 of 8 & 9 Vict., c. 89, and sections 13 and 16 of 8 & 9 Vict., c. 88, and sections 62 and 103 of 17 & 18 Vict., c. 104.

Evidence of nationality.

Ownership by Corporation.

Under a former Registry Act ([d]) it was held that ownership by a corporation within the United Kingdom, some members of which are foreigners residing abroad, may register ships which are the property of such corporation ([e]), though there were in the Act prohibitions against foreigners being entitled to be owners in whole or in part, directly or indirectly, of any vessel requiring to be registered, on the ground that a British corporation was a British owner and a British subject.

Growing practice of shipowners to form themselves into limited liability companies.

A practice has grown up within the last few years of the owners of ships forming themselves into a limited liability company with respect to each ship, and instances of such incorporations are becoming every day more frequent. By establishing such a company and registering under s. 18, sub-sec. 3, of the Merchant Shipping Act, 1854, a practical and effective mode of evading the requirements of the Act as to ownership by British subjects is afforded, and at the same time protection from certain other

Requirements of Merchant Shipping Act,

([a]) The *President*, 5 Rob. Ad., 277.

([b]) See *ante*, page 76.

([c]) 33 Vict., c. 14.

([d]) 8 & 9 Vict., c. 89.

([e]) *Reg.* v. *Arnaud*, 9 Q.B. 806.

liabilities attaching to individual shipowners is secured.

1854, s. 18, thus evaded.

Some complication has been introduced into the question of the nationality of British ships by certain sections of the Merchant Shipping Act, 1854. The 19th section requires that:

Question of nationality complicated.

"Every British ship must be registered, except in manner hereinafter mentioned:

Merchant Shipping Act, 17 & 18 Vict., c. 104, s. 19.

"(1) Ships registered before this Act comes into operation;

"(2) Ships not exceeding fifteen tons burden employed solely in navigation on the rivers or coasts of the United Kingdom, or on the rivers or coasts of some British possession within which the managing owners of such ships are resident;

"(3) Ships not exceeding thirty tons burden and not having a whole or fixed deck, and employed solely in fishing or trading coastwise on the shores of Newfoundland or parts adjacent thereto, or in the Gulf of St. Lawrence, or on such portion of the coasts of Canada, Nova Scotia, or New Brunswick, as lie bordering on such Gulf."

The penalty of non-registration is declared to be that every ship which is by the section required to be registered, shall not, unless registered, be recognised as a "British ship." By the 106th section it is further provided that:—

17 & 18 Vict., c. 104, s. 106.

"Whenever it is declared by this Act that a ship belonging to any person or body corporate qualified according to this Act to be owners of British ships, shall not be recognised as a British ship, such ship shall not be entitled to any benefits, privileges, advantages, or protection usually enjoyed by British ships, and shall not be entitled to use the British flag or assume the British national character; but, so far as regards the payment of dues, the liability to pains and penalties, and the punishment of offences committed on board such ship or by any persons belonging to her, such ship shall be dealt with in the same manner in all respects as if she were a recognised 'British ship.'" (a)

(a) Compare 8 & 9 Vict., c. 88, s. 13.

Object of sections 19 & 106, above quoted.

The object of the 19th and 106th sections was no doubt to make it every shipowner's interest to register his ship by depriving him of all the advantages to be derived from the British nationality of his ships if he did not register, while leaving him subject to all the disadvantages under which British shipping labours and so to make the register a complete index to British shipping. It may be doubted whether the object of the Act has been accomplished. The latter section (106) is but a partial indication of what is to be the effect of non-registration, and is not a definition of the expression "shall not be recognised as a British ship." The logical conclusion from the two sections is that no vessel which ought to be on the register can in law be treated as British, except for the purposes specifically enumerated in the concluding portion of the 106th section. Among those it should seem that the holding of the Inquiries or Investigations mentioned in this work is not included; and wherever, therefore, it is necessary that a vessel should be a "British ship" before such an Inquiry or Investigation can be instituted in respect of her, she must be on the register or there will be no jurisdiction.

Doubtful result.

No jurisdiction in regard to a British ship for the purposes of an Investigation unless she is registered as such.

III.—*How far do the Enactments apply to Foreign Ships?*

Foreign ships, jurisdiction as to.

On a perusal of the Merchant Shipping Act, 1854, and the amending Acts, it will be found that the word "ship" is by no means exclusively applied to British ships. In some cases it has been held to be so limited from the special nature of the sections in which it occurs ([a]). In others again, the enactments are expressly made applicable to British ships only, or to foreign ships only when within British jurisdiction. Presumptively, the word "ship" would include ships whether British or foreign. In the sections above set out relating to Investigations ([b]), the word

([a]) *General Screw Collier Company* v. *Schurmans*, 29 L.J. Ch. 877; 6 Jur. N.S. 883; *Cope* v. *Doherty*, 4 K. & I. 367; 27 L.J. Ch. 600; the *Girolamo*, 3 Hagg. Ad.; the *Carl Johann*, cited 1 Hagg. Adm. 113, 186; the *Wild Ranger*, 32 L.J. 49; *see* also the *Amalia*, 32 L.J. Adm., 191; Br. & L. 151.

([b]) See *ante*, page 56, *et seq.*

"ship" is employed, and when it is intended to restrict the Inquiry to British shipping, the limitation is expressly inserted. In one section [a] when the casualty, the subject of the Inquiry, occurs out of the United Kingdom, the power to hold it is confined to British shipping; while, when it occurs within those limits, the authority to inquire is given in respect of any ship. There is nothing in the nature of these Investigations which should raise a presumption that the Act was not in this respect intended to apply to foreign ships when the circumstances necessary to give rise to an Inquiry occur within British jurisdiction, and the better opinion would seem to be that an Inquiry may be held in that event. The Law Officers of the Crown have on this point recently advised as follows:—"Section 432 of the Merchant Shipping Act, 1854, applies to foreign ships while they are within the limits of British jurisdiction, that is to say, in this case, the United Kingdom, and the powers of that and subsequent sections may be put in force if the loss, abandonment, damage, or casualty occurred within those limits.

Opinion of the Law Officers.

"When section 432 applies, while the foreign ship or her crew are within British jurisdiction, the Board of Trade will have the same means of enforcing their powers upon them that they have with respect to British ships and their crews.

"Section 448 applies in the case of foreign ships which are or may have been in distress on the coasts of the United Kingdom, provided that a person belonging to such ships, or any other who may be able to give any account thereof, or of the cargo or stores thereof, be found within the limits of British jurisdiction. The limits within which the casualty must happen are governed by the construction of the words 'on the coasts,' which we think mean in this section in the vicinity of the shores at a reasonable distance, depending on the circumstances of each case" [b].

Limits of British jurisdiction.

The limits of British jurisdiction, or the United Kingdom, have been mentioned in a previous chapter [c].

(a) 39 & 40 Vict., c. 80, s. 32.
(b) See *ante*, page 38.
(c) See *ante*, page 39.

Casualties to foreign ships. Case of the *Endymion*.

In the case of the *Endymion*, a ship belonging to the United States, burned in the River Mersey in the year 1860, the Board of Trade sought the opinion of the Law Officers of the Crown, the late Lord Westbury (then Sir Richard Bethell) and Sir William Atherton. They advised that "if a foreign ship is lost in the harbours of the United Kingdom, or on the coast of the United Kingdom, and within the limits of territorial jurisdiction, the 432nd and the following sections of the Merchant Shipping Act 1854 apply to the case, and enable the Board of Trade to order an Inquiry into the circumstances of the loss."

Opinion of the Law Officers.

This opinion has been acted upon, and in every case of a casualty to a foreign ship occurring within the above limits, a preliminary Inquiry at least has been, if possible, held by the Receiver of Wreck. It is not usual, however, to order a Formal Investigation in such cases, except at the request, or with the sanction of the foreign State to which the vessel belongs.

Case of the *Franconia* and *Strathclyde*.

In the case of the collision between the *Franconia*, a German vessel, and the *Strathclyde*, a British ship, which took place off Dover, in February, 1876, the Board of Trade had ordered a Formal Investigation to take place, but in consequence of the verdict at the coroner's inquest, the master of the *Franconia* was indicted for manslaughter at the Kent Assizes, at the instance of the Government, and the Inquiry was not proceeded with. The question arose as to the competency of our Courts to try the master, and was afterwards elaborately discussed, and decided in the negative by the Court for Crown Cases Reserved ([a]).

In consequence of that decision, the Territorial Waters Jurisdiction Act, 1878, was passed ([b]).

Case of the *Schiller*.

Among recent Investigations into the loss of foreign ships, may be mentioned the case of the *Schiller*, a large German steamer, wrecked near the Bishop Rock, off Scilly, in May, 1875. This casualty was investigated with the cognizance and approval of the German Government.

Case of the *Deutschland*.

Another case was that of the *Deutschland*, also a large German steamer,

([a]) *Reg.* v. *Keyn*, 2 Ex. Div., 63.

([b]) 41 & 42 Vict., c. 73, and see *ante* page 39.

wrecked off Harwich, in December, 1875. In this instance, the loss took place outside the limits of territorial jurisdiction, and the expedient was resorted to of holding an Inquiry through an inspector (the present Wreck Commissioner, assisted by two colleagues of nautical experience), appointed by the Board of Trade, under the powers of section 14 of the Merchant Shipping Act, 1854 ([a]). The German Government directly sanctioned the Inquiry, and were represented before the Court.

Power by Order in Council under agreements with foreign States to apply provisions of Merchant Shipping Acts to foreign ships.

Since this Inquiry the Merchant Shipping Act, 1876, has been passed, which expressly empowers Her Majesty by Order in Council, to apply any of the provisions of the Merchant Shipping Acts, 1854 to 1876, to foreign ships by agreement with foreign States. The enactment is as follows :—

39 & 40 Vict., c. 80, s. 37.

"Whenever it has been made to appear to Her Majesty that the Government of any foreign State is desirous that any of the provisions of the Merchant Shipping Acts, 1854 to 1876, or of any Act hereafter to be passed amending the same, shall apply to the ships of such State, Her Majesty may by Order in Council declare that such of the said provisions as are in such Order specified shall (subject to the limitations, if any, contained in the Order) apply, and thereupon, so long as the Order remains in force, such provisions shall apply (subject to the said limitations) to the ships of such State, and to the owners, masters, seamen, and apprentices of such ships, when not locally within the jurisdiction of such State, in the same manner in all respects as if such ships were British ships."

No Order in Council applying the provisions of the Merchant Shipping Acts with respect to Formal Investigations to the ships of a foreign State has yet been published.

Assuming that irrespective of any such Order in Council the power of the Board of Trade to order a Formal Investigation into casualties to foreign ships occurring within the limits of the United Kingdom ([b]) is undoubted, it is obvious that without

([a]) See *ante*, Chapter on Preliminary Inquiries, page 39.
([b]) See *ante*, pages 38 and 39, as to those limits.

the cordial co-operation of foreign Governments the exercise of such a power cannot often be attended with practical results, for it is generally necessary to solicit the intervention of the Consul or representative of the particular Government concerned, in order to examine the witnesses to a casualty, and retain them in the United Kingdom to give evidence upon the Inquiry.

Practical difficulties in investigating a casualty to a foreign ship in the United Kingdom.

Courts of Inquiry recently instituted in Germany.

More especially is this so in the case of Germany, the Legislature of which country has of itself initiated a complete system of Inquiries into Wrecks under a law which came into operation on the 1st January, 1878. It is clear from its provisions that our own system has formed the model from which the German law was framed, though it differs from our own in several leading features. The subjects of that country when involved in a casualty naturally prefer to submit themselves to their own tribunal, and to be tried by their own national standards of discipline and efficiency.

B.—Persons Subject to the Authority of Courts Holding Formal Investigations.

These may be classified as under :—

I. Persons holding certificates of competency or service as masters, mates, or engineers:

II. Other persons, not so qualified, who are parties to a Formal Investigation.

I.—Persons holding Certificates of Competency or Service.

Jurisdiction under enactments prior to 1862.

In former chapters it has been pointed out that before the year 1862, the Courts of Formal Investigation were not themselves invested with punitive jurisdiction, unless or so far as the following incidents of an Inquiry can be said to be such, that is to say—the power to make orders for the payment of costs against the parties to the proceedings, and of expressing an opinion as to the cause of the casualty, upon the consideration of which the Board of Trade would determine whether or not to suspend or cancel a certificate. Under the Merchant Shipping Act, 1854, the Court was, upon the direction of the

Board of Trade, to hold a Formal Investigation respecting the loss, abandonment, damage, or casualty; and upon the conclusion of the case to send a report to the Board of Trade, containing a full statement of the case and of their opinion thereon, accompanied by such report of, or extracts from, the evidence, and such observations as they thought fit. They had the same power of summoning parties and witnesses as Justices, in the exercise of their summary jurisdiction, had; but who were to be the parties, and what witnesses were to be called, were matters left to their judgment, to be determined according to the circumstances, with such assistance as they might derive from the representative of the Board of Trade ([a]). The Court was further invested with full and unfettered discretion to make orders for the payment of the costs of the Investigation ([b]). For the enforcement of these powers the Justices or Stipendiary Magistrate were armed only with the means which they or he would have had in summary proceedings ([c]). If the report of the Court was to the effect that the loss, or abandonment of, or serious damage to any ship, or loss of life, was caused by the wrongful act or default of a master or mate, the Board of Trade might suspend or cancel his certificate ([d]).

Changes introduced by the Merchant Shipping Act Amendment Act, 1862.

By the Merchant Shipping Act Amendment Act, 1862, a considerable alteration was effected in the powers of the Courts. The 23rd section of the Act ([e]) transferred to the Court of Investigation the powers of suspension and cancellation theretofore vested in the Board of Trade, but made the exercise thereof subject to certain rules by which the Board had not been fettered, and also liable to review by the Board of Trade. By this Act, moreover, for the first time, engineers of steamships were qualified to obtain certificates; and, as in the cases of masters and mates, they were to be of two kinds, viz., certificates of competency, and certificates of service ([f]).

([a]) 17 & 18 Vict., c. 104, s. 433. See *ante*, page 57.
([b]) *Ibid.*, s. 436. See *ante*, page 58.
([c]) *Ibid.*, s. 433. See *ante*, page 57.
([d]) *Ibid.*, s. 242. See *ante*, page. 56.
([e]) 25 & 26 Vict., c. 63, s. 23. See *ante*, page 60.
([f]) *Ibid.*, secs. 6, 8, 9. See Appendix, pages 386-389.

Accordingly the powers of suspension and cancellation, which had theretofore existed with respect to the certificates of masters and mates, were conferred on the Courts with respect to engineers' certificates also, and made subject to the same rules, and the same liability to review, as were applicable to the cases of masters and mates ([a]).

The rules will be found in the 23rd section of the Merchant Shipping Act Amendment Act, 1862 ([b]). Every decision with respect to cancelling or suspending certificates is to be stated in open Court at the conclusion of the case, or as soon afterwards as possible. If the determination is to cancel or suspend a certificate, the Court must forward the certificate so dealt with to the Board of Trade, and the owner is bound under a penalty for disobedience to deliver it to the Court upon their demand ([c]). As a condition precedent to the cancellation or suspension, a copy of the report or a statement of the case upon which the Investigation is ordered must have been furnished to the owner of the certificate before the commencement of the Inquiry ([d]). It has been held that a copy of the notes of a solicitor who was instructed to attend a coroner's inquest upon the body of a person who lost his life by the casualty, these having formed the materials upon which the Investigation was ordered, is a sufficient report or statement within the rule ([e]). So, too, the short report of the Receiver of Wreck upon which an Inquiry has been ordered, has also been held sufficient to satisfy the Statute ([f]). If the Investigation is conducted by Justices or a Stipendiary Magistrate, the certificate cannot be dealt with unless one Assessor at least expresses his concurrence in the report([g]). This provision applies also to the Wreck Commissioner when he holds an Investigation under the Eighth Part of the Merchant Shipping Act, 1854([h]).

What is a sufficient report or statement of the case.

Concurrence of one Assessor necessary.

([a]) 25 & 26 Vict., c. 63, s. 23, sub-sec. 2.
([b]) *Ibid.*, See *ante*, page 60.
([c]) *Ibid*, s. 24. See *ante*, page 61.
([d]) *Ibid.*, s. 23, sub-sec. 6.
([e]) *Ex parte Ferguson*, 6 Q.B. 280.
([f]) The *Dinorah* and *Dorunda*, *Solicitors' Journal*, vol. XXI., page 9.
([g]) 25 & 26 Vict., c. 63, s. 23, sub-sec. 6.
([h]) 39 & 40 Vict., c. 80, s. 29.

A further power of suspension and cancellation is given by the 16th section of the Merchant Shipping Act, 1873 (a).

Further power of suspension and cancellation by the Merchant Shipping Act, 1873.

The certificates (b) subject to the above powers are those whether of competency or service, granted by the Board of Trade under the Third Part of the Act of 1854 to masters and mates, and under the Merchant Shipping Act Amendment Act, 1862, to engineers of steamships (c). There is another class of certificates granted in British possessions abroad under the Merchant Shipping (Colonial) Act, 1869, and Orders in Council thereunder. The certificates so granted have equal validity with the certificates above-mentioned. The provisions of the Act which relate to the subject are those contained in section 8, and are stated at length in Chapter VIII, on Investigations in British Possessions Abroad, see page 152.

The certificates subject to the above powers.

Colonial certificates.

The Board of Trade must be satisfied that the certificates under the above section are liable to be forfeited for the like reasons, and in the like manner as the certificates under the Acts of 1854 and 1862. It should therefore follow that they are subject to liability to cancellation or suspension by Courts of Formal Investigation. It is obvious, however, from a perusal of the enactment that the Orders in Council must have a material bearing upon this point.

It is conceived that it is not sufficient to give rise to the exercise of the power of the Court to cancel or suspend certificates, that a man should have a certificate as master, mate, or engineer, but that he must, when guilty of the act or neglect for which the certificate is liable to be dealt with, have been in point of fact, acting and doing duty as a master, mate, or engineer, either as a volunteer, or under an appointment from a shipowner or other person duly authorized.

Limitation to exercise of power to cancel or suspend certificates.

Much stress has been laid in many instances upon the penal jurisdiction of the Courts of Investigation, and the Inquiries have been termed "prosecutions." In truth, as has been shown, the exercise of the penal

Nature of jurisdiction.

(a) 36 & 37 Vict., c. 85. See *ante*, page 61.

(b) Certificates of Masters and Mates of Fishing boats are also subject to the jurisdiction of Courts of Formal Investigation. See Appendix, pages 387-390.

(c) For a fuller account of these certificates. See Appendix, page 381.

power is an incident, and not the object of the Inquiry, the main purpose of which is investigation. Mr. Rothery, the present Wreck Commissioner, adverted to this matter soon after his appointment, and pointed out that in his opinion the Investigations are not in any sense in the nature of a criminal prosecution, but so far as they concern the dealing with certificates are Inquiries into the fitness and competency of a certificate holder, and that these certificates having been originally granted upon the condition of fitness and competency, they are subject to the continued exhibition of those qualifications. It must, however, be admitted that the loss or suspension of a certificate, coupled as it may be, with the expense of instructing an advocate on behalf of its holder, and the liability to pay or contribute to the costs of the proceedings, is, in its consequences, highly penal.

Differences of opinion as to punishment.

It has been a much debated question whether punishment of this kind should be inflicted. It was discussed before the Royal Commission on Unseaworthy Ships of 1873, and has been the subject of strong comment among shipowners and shipmasters. This question may be deserving of further consideration, but while the existing law remains in force, the subject is scarcely relevant to the purpose of this work.

GROUNDS FOR SUSPENDING OR CANCELLING A CERTIFICATE.

The grounds upon which the certificates of masters, mates and engineers are liable to suspension or cancellation after a Formal Investigation are some of those stated in the 242nd section of the Merchant Shipping Act, 1854, and the 16th section of the Merchant Shipping Acts, 1873 (*). They are as follows:—

Wrongful act or default.

I. That a master, mate, or engineer has been guilty of a wrongful act or default by which the loss or abandonment of or serious damage to any ship, or loss of life has been caused:

(*) *Ante*, pages 56 and 61.

II. That a master or person in charge of a *British* vessel which has been in collision with another vessel has without reasonable cause failed to render to the other vessel her master, crew, and the passengers (if any) such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision, he being able to do so without danger to his own vessel, her crew, and passengers (if any):

Failure of duty in case of collision.

III. That a master or person in charge of a *British* vessel which has been in collision with another vessel has without reasonable cause failed to give to the master or person in charge of the other vessel the name of his own vessel, and of her port of registry, or of the port or place to which she belongs, and also the names of the ports and places from and to which she is bound, he being able to do so without danger to his own vessel, her crew, and passengers (if any).

I.—Wrongful act or default.

Offences cannot be more precisely defined.

With respect to offences of the class first above specified, it is obvious that no more precise definition can be framed. They are as various as the incidents of the casualties themselves. A master, for instance, may either be guilty of gross acts of misconduct, or he may fail in prudence, in care, in watchfulness, in the common requirements of seamanship, in regard for human life, or in a hundred other ways. If his conduct, or that of a mate or engineer, in his own special sphere of duties, is sufficiently culpable to amount, in the opinion of a Court of Inquiry, to a wrongful act, or a wrongful default, which has caused or contributed to one of the contingencies above enumerated, then and then only he becomes liable to punishment by the loss or suspension of his certficate. It has been held that the act or default must be distinctly such as to bring it within the section, otherwise the cancella-

tion or suspension is unjustifiable [a], that is to say, it must have caused or contributed to the casualty. An error of judgment made by a master in a moment of difficulty and danger does not render his certificate liable to be dealt with [b]. The other cases which have been heard on appeal by the Court of Admiralty are collected in Chapter X. and should be referred to in connection with the question as to what is a wrongful act or default.

Material damage necessary.

By the 32nd section of the Merchant Shipping Act, 1876 [c], the power of Courts of Formal Investigation is extended to cases of shipping casualties other than those into which they might have inquired under the Act of 1854; and it is enacted that all the provisions of the Merchant Shipping Acts 1854 to 1876, shall apply thereto as if they had been held under the Eighth Part of the Act of 1854. The High Court held that notwithstanding this last provision the power of cancellation or suspension was not extended, but that in order to enable a Court of Formal Investigation to deal with a certificate, the case must be brought within the 242nd section of the Merchant Shipping Act, 1854 [d], and that the provisions relating to cancellation and suspension must be strictly construed. In that case the ship had stranded without sustaining material damage. In the chapter on Appeals the cases in which the Appellate Court has put a construction on the section will be found noticed in detail [e].

Instances of a wrongful act or default of a master.

By way of illustration of the sort of conduct of a master in respect of which a wrongful act or default may be attributed to him, the following are a few instances selected from cases in which masters have been actually held to contravene the statute [f] :—

Setting an improper course;

Proceeding at too high a speed in thick weather;

Prematurely abandoning his vessel;

(a) The *Arizona*, 5 Prob. Div., 123; 49 L.J. 54; 42 L.T. 405; 28 W.R. 704.

(b) The *Famenoth*, 7 Prob. Div. 207. As to errors of judgment generally. See post, page 93.

(c) 39 & 40 Vict., c. 80, s, 32, *ante*, page 63.

(d) *Ex parte Story*, 3 Q.B.D. 166; 47 L.J. 266.

(e) See post, chapter X., page 194.

(f) 17 & 18 Vict., c. 104, s. 242, sub-sec. 2, *ante*, page 57.

Navigating his vessel with insufficient and unseamanlike care;

Improper stowage of cargo;

Neglecting to use the lead;

Neglecting to have a proper look-out ([a]) kept;

Neglecting to keep hatches open with a cargo of coal;

Neglecting to use the log to ascertain speed;

Neglecting to allow for the set of the tide in verifying the position of his vessel from time to time on the course set;

Neglecting to take cross bearings of lights;

Neglecting to verify deviation of compass;

Neglecting to cause pumps to be worked with sufficient promptitude, continuity, and vigour, at a critical time;

Neglect of duty and navigation through excessive indulgence in intoxicating liquor;

Absence from deck when the safety of the vessel required his personal supervision.

Instances of wrongful act or default of a mate.

The following instances of conduct of a mate have been held to amount to a wrongful act or default under the statute ([b]):—

Altering course without, or contrary to the orders of the master;

Neglecting to keep a proper look-out during the mate's watch;

Neglect of duty and navigation through excessive indulgence in intoxicating liquor.

Instances of a wrongful act or default of an engineer.

An engineer has been held guilty of a wrongful act or default under the statute ([c]) in respect of the following conduct:—

Neglecting to see that the sea-cocks were properly closed;

([a]) By Article XX. of the "Regulations for Preventing Collisions at Sea," it is expressly declared that "nothing in these Rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, *or of any neglect to keep a proper look-out*, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case." See Appendix, page 401.

([b]) 17 & 18 Vict., c. 104, s. 242, sub-sec. 2, *ante*, page 57.

([c]) 17 & 18 Vict., c. 104, s. 242, sub-sec. 2; and 25 & 26 Vict., c. 63, s. 23, sub-sec. 2, *ante*, pages 57-60.

Neglecting to test the density of the water in the boiler;

Neglecting an incrustation of salt formed on the top of the furnace in consequence of which it collapsed;

Neglecting to examine the pistons and other parts of engines;

Neglecting to maintain proper discipline in the engine-room.

Degree of culpability.

In every case the degree of culpability attaching to all these acts must be estimated according to the circumstances in which they were committed ([a]). Under one set of conditions they may be venial, while in another they may be inexcusable, in a man of ordinary prudence and intelligence.

Breach of obligation imposed upon the master by the Merchant Shipping or Passengers Acts.

A wrongful act or default causing or contributing to the loss, abandonment of, or serious damage to a ship or loss of life ([b]), may also arise in respect of the breach or neglect of some obligation directly imposed upon the master by the Merchant Shipping or Passenger Acts for the infraction of which he may be criminally prosecuted. Of this class are the following:—

Instances of the above.

Taking an unseaworthy ship to sea ([c]);

Knowingly allowing grain cargo to be improperly stowed contrary to the statute ([d]);

Carrying deck loads of timber in winter contrary to the statute ([e]);

Being in default in respect of the statutory requirements as to boats or life-buoys ([f]);

Being in default in providing steamships with safety-valves, adjusted compasses, or other requisites prescribed by statute ([g]);

Placing undue weight on safety-valves ([h]);

Disobedience to directions of Receiver of Wreck, when the ship is stranded or in distress ([i]);

([a]) See post, page 93 as to "Errors of Judgment."

([b]) See also Classes II. and III. as to failure of duty in case of collision, post page 96.

([c]) 39 & 40 Vict., c. 80, s. 4. ([d]) *Ibid*, s. 22. ([e]) *Ibid*, s. 24.

([f]) 17 & 18 Vict., c. 104, s. 293; and 18 & 19 Vict., c. 119, s. 27, as construed by 35 & 36 Vict., c. 73, s. 5.

([g]) 17 & 18 Vict., c. 104, s. 301.

([h]) *Ibid*, s. 302.

([i]) *Ibid*, s. 441.

Going to sea from the United Kingdom without signals of distress, and other statutory requisites in passenger steamers and emigrant ships [a];

Carrying in "passenger ships" [b] certain articles as cargo or ballast likely to endanger life, or the safety of the ship;

Doing any act by wilful breach of duty, or neglect of duty, or drunkenness, tending to the immediate loss, destruction, or serious damage to a ship, or to endanger life on board the same, or refusing or omitting from the same causes respectively to do any lawful act proper and requisite for avoiding the above consequences [c].

Infringement of ordinary criminal law.

A wrongful act or default may also arise in respect of acts amounting to an infringement of the ordinary criminal law (as distinct from the above-mentioned statutory obligation imposed upon the master), if such acts occasion, or contribute to the loss or abandonment of, or serious damage to a ship, or loss of life. Of this class are such offences as the scuttling or burning of a ship, and the like.

"Errors of judgment."

Mr. Norwood's evidence before the Royal Commission of 1873.

As already mentioned, the circumstances in which the conduct of a certificated officer is displayed, have a strong bearing upon the question whether or not it amounts to a wrongful act or default. In connection with this question, the culpability of an officer in respect of what are called "Errors of judgment," have been the subject of considerable discussion. In his evidence before the Royal Commission, Mr. Norwood, M.P. for Hull, expressed himself as follows:—

"We owners are by recent legislation liable to be tried for misdemeanour, if we knowingly and wilfully risk seamen's lives by sending ships to sea in an improper condition, and I think that in extreme cases of misconduct the same liability should attach to our captains, and our officers, and even to our seamen; but I think that a broad distinction ought to be drawn between absolute misconduct and errors of judgment. I think an error of judgment on the part of the captain is really and fairly a sea risk,

(a) 39 & 40 Vict., c. 80, s. 21.

(b) 18 & 19 Vict., c. 119, s. 29, as construed by 35 & 36 Vict., c. 73, s. 5.

(c) 17 & 18 Vict., c. 104, s. 239.

which we are all of us liable to, that is to say, a master is often placed in a position of extreme difficulty at a moment's notice ([a]), and he may commit an error of judgment which appears a serious matter to gentlemen who sit in armchairs at Whitehall, but if they had been placed in that position of danger and difficulty themselves, they would perhaps have done no better. But I object strongly to masters, whether those casualties occur from mere errors of judgment or from misconduct, being treated in precisely the same way" ([b]).

It is obvious from the whole tenor of this statement, and from a further distinction drawn by Mr. Norwood in his subsequent evidence between minor misdeeds and serious dereliction of duty, such as "gross carelessness," which he desires should be visited even by far more severe punishment than the cancellation of a master's certificate, that he is by no means inclined to excuse an error of judgment altogether. On the contrary, he holds that it may either be venial or the reverse, and he would closely scrutinize the degree of culpability involved and award punishment accordingly. This is no doubt the true distinction, and it was supported by Sir T. H. Farrer, who in his evidence summed up the matter thus:—

Sir T.H. Farrer's evidence before the Royal Commission of 1878,

"An error of judgment may either be culpable, or may not. Has the mistake been such as a competent and careful officer ought to make, or to be excused for making? That is the real question" ([c]). Sir T. H. Farrer gave similar evidence before the Select Committee of 1860 ([d]). The elasticity and wide application of the term "Errors of judgment" is sufficiently obvious. It may embrace every shade of conduct from a slight and venial mistake, from "losing one's head" in a position of difficulty, and under the stress of per-

and the Select Committee of 1860.

([a]) It has been seen above that an error of judgment of this very kind has now been held on appeal not to be punishable. See *ante*, page 90.

([b]) Final Report and Evidence on Unseaworthy Ships, vol. II., 1874, page 215.

([c]) *Ibid.*, page 50.

([d]) Report and Evidence of Select Committee on Merchant Shipping of 1860, page 541.

plexity or danger, to acts of the grossest stupidity and recklessness. In the somewhat analogous case of an engine driver in charge of a railway train, his conduct is sometimes held to amount to the serious crime of manslaughter. An instance of an error of judgment of the graver kind in connection with a shipping casualty may be here mentioned. It arose out of the loss of the *Orion* steamship, in the year 1850, which, as we have seen ([a]), formed the subject of an early Inquiry under the enactments of the Steam Navigation Acts. In consequence of the facts disclosed at the Inquiry, the master and second mate were respectively indicted for culpable homicide. The trial took place in Scotland, and the Lord Justice Clerk in charging the jury made the following observations :—

Criminal "Error of judgment."

"The principles of law the Court was bound to lay down to the jury, had been much considered in recent cases, particularly that of *Paton and McNab*, November, 1845, Brown, vol. II., page 515, and consisted in this :—'That any person placed in a situation in which his acts may affect the safety of others must take all precautions to guard against the risk to them arising from what he is doing.' * * * * It was unnecessary that the panels should be guilty, to the same extent, of culpable neglect of duty which occasioned loss of life. There might be innumerable degrees of guilt under such a charge, occasioned not merely by the amount of recklessness displayed, but by the duty and responsibility which the party had undertaken. The principle however being, as before stated, that a party charged with the care of life was bound to exercise to the utmost extent all the caution and care within his power, such an occurrence as that before the jury, where a vessel was shown to have been sailing for a long distance unusually near the shore, and at length, immediately after seeing Portpatrick Harbour Light, continuing the same course, until the vessel struck on a well-known rock, on a calm and comparatively a clear night, threw on those on whom her management depended the *onus* of showing respectively that they had done everything within their power to

([a]) See Introduction, page 16.

prevent the occurrence of such a catastrophe. No doubt the guilt might arise from totally different circumstances; that of the captain from improperly leaving his vessel in charge of the second mate; whilst that of the mate might arise from the manner in which he exercised the trust reposed in him. * * * * It has been said, that there was nothing more than error in judgment attributable to him [the captain]. That he did err in judgment, as before mentioned, was undoubted, for had his conduct been intentional to produce the disaster which occurred, his crime would have been that of murder. The question was, did he, charged with the care of a vessel containing so many passengers, culpably leave her to the care of another, by whose mismanagement the wreck was occasioned? * * * *"

The jury, by a majority, found the captain guilty of culpable, but not reckless neglect of duty, and unanimously found the panel (the second mate) guilty of culpable and reckless neglect of duty.

The second mate was sentenced to seven years' transportation, and the master to imprisonment for eighteen calendar months.

The entire charge is instructive, and contains so clear an exposition of the duties and responsibilties of ships' officers that it has been thought worth while to print it in the Appendix (a).

II. and III.—Failure of duty in cases of collision.

Applicable only to persons in charge of British ships.

The cases II. and III. it will be observed, apply only to masters or persons in charge of *British* vessels. In *ex parte Ferguson* (b) an English steamer ran down a fishing coble; no injury ensued to the steamer or anyone on board of her, but the coble sank and three of her crew were drowned; the master was below and the mate was in charge of the deck; the master came up soon after the collision, but neither master nor mate took any steps to save the men. The certificates of the master and mate

(a) Pamphlet by Mr. Thomas Gray, on "Wrecks and Misconduct at Sea," written in 1871, revised in 1873, reprinted from the *Nautical Magazine*. See Appendix, page 340.

(b) *Ex parte* Ferguson, 6 Q.B. 280.

were suspended for three months upon an Inquiry under section 33 of the Merchant Shipping Act of 1862, which was in terms similar to those of the 16th section of the Act of 1873. The Court of Queen's Bench held that the mate before, and the master after, he came on deck were "in charge" within the meaning of the statute, and that their certificates had been lawfully suspended.

In the classes II. and III of cases now under consideration the conduct which involves liability to suspension or cancellation is by the statute made a misdemeanour. It may further be the subject of an Investigation into conduct under section 241 of the Merchant Shipping Act, 1854, as distinguished from a Formal Investigation into a shipping casualty. This question is more fully discussed in a later Chapter ([a]), and it is submitted that where a Formal Investigation is actually being held into the circumstances of a collision the whole matter may properly be inquired into, and the certificate of the master or person in charge may be dealt with in those proceedings.

Breach of Regulations for preventing collisions at sea.

For the safety of vessels navigated on the seas, regulations have been made, which are only to be departed from under exceptional circumstances. Some apply to certain rivers only, and are usually made under special Acts, others are made applicable to the high seas in general. The latter together with the reference to the statute under which they are made, are printed in the Appendix ([b]). Departures from these "rules of the road" are, and ought to be highly censurable, and may, in certain circumstances, expose the wrongdoer to criminal liability([c]), and also if he hold a certificate to its suspension or cancellation ([d]).

The above classes of offences, II. and III. (if they cause or contribute to the loss of, or serious damage to a ship, or loss of life), may also constitute a wrongful act or default ([e]).

([a]) See post, Chapter VII., pages 131 and 137.
([b]) Page 401.
([c]) *Reg.* v. *Keyn*, 2 Ex. Div., 63.
([d]) 25 & 26 Vict., c. 63, ss. 27, 28.
([e]) See *ante*, page 62.

II.—Persons other than Certificated Officers who are Parties to a Formal Investigation.

As to third persons who are parties to a Formal Investigation.

Persons other than certificated masters, mates, or engineers, may become, or be made parties to a Formal Investigation, and when parties, are to some extent subject to the jurisdiction of Courts of Formal Investigation. It is not proposed to consider here who are liable to be made, or who may claim to be parties. Those are questions which are more properly discussed under the head of procedure ([a]), and in the chapter devoted to that subject the matter is fully dealt with.

Subject-matter of Inquiry.
1. The circumstances and cause.
2. The conduct of certificated officers.
3. The conduct of third parties.

There is no precise definition laid down in the Merchant Shipping Acts with respect to the subject matter of Inquiry at a Formal Investigation, but it is clearly to be gathered that the circumstances and cause of the casualty, and the conduct of the certificated officers of the ship, so far as it may have conduced to the casualty, are to be investigated. The conduct of persons ([b]) other than certificated officers may also have brought about or contributed to the disaster, and may not only thus be fairly and properly brought within the scope of the Inquiry, but may require to be examined in order to determine the cause of the casualty. Thus it happens not infrequently that the master or person in charge of the ship is not the holder of any certificate, or that the owner or some other person may by his conduct have directly contributed to the casualty. The clauses of the Merchant Shipping Acts, however, contain no trace of any penal jurisdiction conferred upon Courts of Formal Investigation, as against such third persons, apart from the power to award costs against them to which reference is made in the chapter on procedure.

No penal jurisdiction against third parties except as to costs.

We have seen ([c]) that for the purpose of hearing and trying a Formal Investigation, two Justices or a Stipendiary Magistrate have, so far as relates to the

([a]) See post, page 109.

([b]) By the General Rules of procedure the Board of Trade are required to state at the proper stage upon what questions, in reference to the causes of the casualty, and the conduct of any persons connected therewith, they desire the opinion of the Court. See post, page 119.

([c]) 17 & 18 Vict., c. 104, s. 433. See *ante*, page 57.

summoning of parties, the same powers as if the same were a proceeding relating to an offence or complaint upon which they or he have power to make a summary conviction or order or as near thereto as circumstances permit. The same jurisdiction and powers are now conferred (a) upon a Wreck Commissioner, and the Lord Chancellor may make General Rules for carrying into effect the enactments relating to Formal Investigations, and in particular with respect to (among other matters) the parties, and the notice to such parties. But all these powers are expressly to be exercised for the purpose of "hearing and trying" or "holding a Formal Investigation" and "for carrying into effect the enactments relating thereto." The jurisdiction as against all the parties thereto, must accordingly be sought in the enactments themselves, and these contain no definition of the offences which may be charged against any persons other than certificated masters, mates, and engineers; they confer no authority and prescribe no machinery for trying any other class of offenders, and they do not empower the Court to inflict punishment (b), or even directly to censure any other class. It may be matter for discussion whether it is desirable to enlarge the jurisdiction of the Courts of Formal Investigation in this direction, but on the other hand, the inconvenience, if not injustice, of needlessly prolonging and widening out the scope of an Inquiry by travelling into collateral and frequently criminal issues not really necessary to the Inquiry, is sufficiently obvious. The questions which are permissible under the terms of the statute and rules are in themselves so comprehensive as to have provoked remark, and even a protest, on some occasions by the parties interested. In the well-known case of the *Princess Alice* inquired into at so much length in October, 1878, the fitness of the vessel in point of stability and construction might be said to to have been a legitimate subject of investigation, in a case of such gravity, but it was, nevertheless, a matter of strong comment on the part of the repre-

Inconvenience of travelling into collateral and often criminal issues.

(a) 39 & 40 Vict., c. 80, s. 29. See *ante*, page 62.

(b) Report and Evidence of Unseaworthy Ships Commission, Vol. II., 1873, pages 303 and 305.

sentatives of some of the parties that their clients were put to great expense by that question having been raised ([a]).

What is the real issue.

The real issue in a Formal Investigation is ([b]), according to the existing law, "what was the cause of the casualty." In so far as the trial of that issue may involve the conduct of a certificated officer, the statutes expressly provide that it shall be reported on ([c]) by the Court, and that they may exercise powers of cancelling or suspension of certificates. So far as the cause of the casualty is to be sought in the conduct of other parties, that conduct must also be discussed, inquired into, and reported upon, but at this point the jurisdiction in their case appears to become exhausted, except in regard to the power to visit them with costs as already mentioned. It is true that it has been said fairly enough that the expression "any person" in section 30 of the Merchant Shipping Act, 1876, which provides that "every Formal Investigation into a shipping casualty shall be conducted in such manner that if a charge is made against any person that person shall have an opportunity of making a defence," is a proof that some extended jurisdiction was intended to be conferred, because the word "person" embraces others than certificated officers. No doubt it would have been more verbally accurate to have used the words "master, mate, or engineer" instead of "person," but the very form of the clause appears to preclude the wider interpretation above suggested. It does not declare that charges shall or shall not be made, but that "if a charge is made" there shall be opportunity of defence. Such language cannot, it is submitted, carry the Act any further, or enlarge the scope of inquiry previously laid down by the enactments in question. The effect of the clause is to provide for those who may be impeached under the provisions of the Merchant Shipping Acts, an opportunity for genuine defence, and not to extend the subject-matter of the charge, or to apply the clause to new classes of offenders.

([a]) *Princess Alice* Report, dated 6th November, 1878.

([b]) *Ante*, page 98.

([c]) See *ante*, pages 58 and 60.

C.—Report to the Board of Trade.

Statutory requirements.

The statutory requirements upon the subject of this report are those contained in section 433 of the Merchant Shipping Act, 1854 ([a]), and section 23, sub-sec. 3 of the Merchant Shipping Act Amendment Act, 1862 ([b]), the terms of which are in substance the same, and section 30 of the Merchant Shipping Act, 1876 ([c]), by which it is enacted that "Each Assessor shall either sign the report made on the Investigation or report to the Board of Trade his reasons for his dissent therefrom."

In the chapter on Naval Courts there will be found some observations ([d]) on the contents of the report, which are, to some extent, applicable to the statutory reports by Courts of Formal Investigation. The report proper usually contains a bare statement of the finding of the Court and the orders made, and its form is prescribed by the Rules of Procedure, to which the reader is referred ([e]). In an annex thereto, the Court states in detail the facts and circumstances of the case, together with the questions ([f]) put by the Board of Trade in reference to the causes of the casualty, and the conduct of any persons connected therewith, the answers to such questions, and the reasons for the opinions and decision of the Court. These should obviously be stated in a complete and exhaustive manner.

([a]) See *ante*, page 58.
([b]) *Ibid.*, page 60.
([c]) *Ibid*, page 63.
([d]) See Chapter IX., pages 171 and 176.
([e]) See General Rules, post, page 127 and page 215.
([f]) *Ibid.*, page 119 *et seq.*

CHAPTER V.

PROCEDURE OF COURTS OF FORMAL INVESTIGATION.

PRELIMINARY PROCEEDINGS.

Before the Merchant Shipping Act, 1876, the only provision for procedure was contained in the Merchant Shipping Act, 1854, s. 433.

Prior to the passing of the Merchant Shipping Act, 1876, the only provision regulating the actual procedure in relation to a Formal Investigation was that contained in section 433 of the Merchant Shipping Act, 1854, by which it was enacted that for the purpose of hearing and trying a case the [two] "Justices or [Stipendiary] Magistrate shall * * * *, so far as relates to the summoning of parties, compelling the attendance of witnesses, and the regulation of the proceedings, have the same powers as if the same were a proceeding relating to an offence or cause of complaint upon which they or he have power to make a summary conviction or order, or as near thereto as circumstances permit" ([a]).

We have seen ([b]) that a Wreck Commissioner has, for the purpose of holding a Formal Investigation, been invested with the same jurisdiction and powers as are by the eighth part of the Merchant Shipping Act, 1854 (which comprises the section quoted above), conferred on two Justices, and all the provisions of the Merchant Shipping Acts, 1854 to 1876, with respect to investigations conducted under the eighth part of the Merchant Shipping Act, 1854, apply to investigations held by a Wreck Commissioner.

Now supplemented by the provisions of sec. 30 of the Merchant Shipping Act, 1876.

The above provision has now been supplemented by the enactments contained in section 30 of the Merchant Shipping Act, 1876, before quoted ([c]), and, in regard to the appointment of Assessors, by the Shipping Casualties Investigations Act, 1879 ([d]).

General Rules.

General Rules, dated 28th July, 1878 ([e]), and Addi-

([a]) 17 & 18 Vict., c. 104, s. 433. See *ante*, page 57.
([b]) 39 & 40 Vict., c. 80, s. 29. See *ante*, page 62.
([c]) *Ibid.*
([d]) 42 & 43 Vict., c. 72, s. 3. See *ante*, page 64.
([e]) See Chapter VI., page 106 and Appendix, page 211.

tional Rules, dated 20th December, 1879 ([a]), and 19th April, 1880 ([b]), respectively, having been made by the Lord Chancellor by virtue of the power contained in the above sections, the proceedings relating to Formal Investigations are now regulated by those Rules, so far as their provisions extend.

The general principles upon which the Board of Trade proceed in directing a Formal Investigation have been explained in a former chapter ([c]). The Order is immediately communicated to the Solicitor to the Board of Trade, to whom are also sent the papers relating to the case. His proceedings necessarily depend upon the circumstances of the particular casualty to be investigated. In general, however, his first care is to ascertain the whereabouts of the master, officers, helmsman, look-outman, and any passengers or other persons who may appear to be able to give material evidence on the subject. The witnesses having been thus traced are "detained" through the agency of Receivers of Wreck at the outports.

Order for Investigation.

The process of so-called detention consists simply in an intimation to the witnesses that they will be required to appear and give evidence at the Formal Investigation, and they receive subsistence money on a fixed scale (unless it be withheld for some special reason) until the conclusion of the Inquiry.

Detention of witnesses.

The evidence of the master, officers, and principal members of the crew will frequently have been already taken at a Preliminary Inquiry. This may have been held by the Receiver of Wreck under the provisions of section 432 of the Merchant Shipping Act, 1854 ([d]), or an examination may have been held by the Wreck Commissioner ([e]), Receiver of Wreck, or a Justice of the Peace under section 448 of the same Act ([f]). In either case the statements so taken are in the form of depositions on oath.

If no Preliminary Inquiry shall have been held, or if, as commonly happens, the depositions obtained

Steps preparatory to hearing.

([a]) See Chapter III., page 51 and Appendix, page 216.
([b]) *Ibid* page 52, and Appendix, page 219.
([c]) See *ante*, page 42.
([d]) See chapter on Preliminary Inquiries, page 31.
([e]) See *ante*, page 38.
([f]) *Ibid*, page 36.

at such Inquiry require to be supplemented by additional particulars, the Receiver is directed to obtain such particulars in the form of answers to specific questions and transmit them to the Board of Trade. Sometimes, when there is no Receiver of Wreck at or near the place where a witness is, or for other reasons, it is deemed expedient to send a special representative from headquarters for the purpose.

The particulars thus ascertained necessarily vary according to the circumstances of the casualty, but usually comprise a statement of the courses steered, the orders given on board, the state of the weather, the sails (if any) set, the rate of speed, the lights and landmarks visible before and at the time of the casualty, the steps (if any) taken to avert it, the efforts made to save life, the circumstances attending the casualty, the condition of the ship, equipments, cargo and crew, and all other necessary facts.

Service of Notice.

At an early stage of the proceedings it becomes necessary to determine upon what persons it is proper to serve a Notice of the Investigation under the 23rd section of the Merchant Shipping Act Amendment Act, 1862, and General Rules for Formal Investigations, the provisions of which are set forth in the succeeding pages.

Completion of case for hearing.

The evidence is scrutinized, and steps are taken to complete the case in every respect, and prepare it for hearing. In many instances the nature of the questions arising makes it necessary to be prepared with evidence of a somewhat technical character; and there are often points upon which additional evidence must be obtained. It may, for example, be necessary to investigate matters involving defects in the construction, stability, or condition of the ship, her engines, boilers or equipments, or general seaworthiness, questions of overloading or improper loading, especially with regard to the stowage of grain, coal, iron, rice, and other cargoes, of undermanning, of explosion or spontaneous combustion, the management of life-saving apparatus, or lights, insufficiency of lights, buoys, beacons, or other indications of danger, defective charts, variations in navigable channels, the shifting of sand banks and shoals, defective or improperly adjusted compasses, or the like. It may therefore be-

come necessary to procure the evidence of shipwright surveyors, shipwrights, engineers, chemists, compass adjusters, stevedores, shipowners, Coast Guard officers, lifeboat crews, meteorologists, lighthouse or lightship men, local pilots, or others who can give evidence upon the particular questions involved.

CHAPTER IV.

GENERAL RULES [a] FOR FORMAL INVESTIGATIONS. 1878.

The following are the General Rules for Formal Investigations, made by the Lord Chancellor under the provisions of section 30 [b] of the Merchant Shipping Act, 1876, to regulate the procedure of Courts of Formal Investigation :—

[Where no other provision is made by these Rules, or by the Merchant Shipping Acts, the procedure is regulated by the sections of the Acts of Parliament before explained, which clothe the Courts with their original jurisdiction.]

Rule I. Short Title.

RULE I.

These Rules may be cited as "The Shipping Casualties Rules, 1878."

Rule 2. Commencement.

RULE II.

These Rules shall come into operation on the 1st day of October, 1878.

Rule 3. Interpretation.

RULE III.

In the construction of these Rules, the word "Judge" shall mean the Wreck Commissioner, Stipendiary Magistrate, Justices, or other authority empowered to hold a Formal Investigation into a shipping casualty.

Rule 4. Publication of Rules.

RULE IV.

These Rules shall be published by Her Majesty's Stationery Office through its agents, and a copy shall

(a) The General Rules as to appointment of Assessors are stated in the Chapter on Constitution of Courts of Formal Investigation, see page 51.

The General Rules for Appeals and Re-hearings will be found in Chapter XI., post, page 204.

(b) See *ante*, page 62.

be kept at every Custom House and Mercantile Marine Office in the United Kingdom, and any person desiring to peruse them there shall be entitled to do so.

RULE V.

Rule 5. Notice of Investigation.

When a Formal Investigation into a shipping casualty has been ordered, the Board of Trade may cause a notice, to be called a Notice of Investigation, to be served upon the owner, master, and officers of the ship, as well as upon any person who may appear to have in any way contributed to the casualty. Form of the Notice of Investigation will be found in the Appendix No. 1 [to the Rules] (a).

Sufficiency of report or statement of case.

In a case in which an Inquiry was ordered upon the notes of an attorney instructed by the Board of Trade to attend a Coroner's Inquest on the body of a person drowned in consequence of a shipping casualty, a copy of those notes served on an officer, has been held a sufficient report or statement of the case within the meaning of the Act (b). *Ex parte Ferguson*, L.R. 6 Q.B. 280.

Upon a question being raised, that a short report made by a Receiver of Wreck (a copy of which was appended to the Notice of Investigation as the document upon which the Inquiry was ordered) was insufficient, without copies of all the documents which had influenced the Board of Trade in ordering the Inquiry; the Wreck Commissioner held that as it appeared that the short report was that upon which the Inquiry was ordered, the Statute had been amply complied with. The *Dinorah* and *Dorunda*, "Solicitors' Journal," XXI., page 81.

Appended to the Notice is a copy of the Report, or a statement of the case upon which the Investigation has been ordered. Unless this copy of report or statement shall have been furnished to the owner of a certificate before the commencement of the Investigation, the certificate cannot be cancelled or suspended (c). This form of notice was formerly served only upon the master and officers of the ship whose certificates were intended to be called in question in the Formal Investigation, but the same form has now been adopted for service also upon the owner of the ship, and upon any other person who may appear to have in any way contributed to the casualty, and whom it is intended to make a party to the

Practice as to service of notices.

(a) See Appendix, page 214.
(b) 25 & 26 Vict., c. 63, s. 23, sub-sec. 6.
(c) 25 & 26 Vict., c. 63, s. 23, sub-sec. 6. See *ante*, page 60.

proceedings, for, as will be seen from the succeeding Rules, the effect of such service is, as to the Board of Trade and certificated officers, to place them when served in the position of a party (r. 6), and as to other persons to place them in that position upon their appearance at the Investigation (r. 7).

Upon the master and all the officers.

The master and all the officers of the ship being called by the Board of Trade as witnesses at the Formal Investigation, are usually served with the Notice of Investigation, notwithstanding that by the provisions of the 6th Rule the officers so served all become *ipso facto* parties to the proceedings. Being an Inquiry, it cannot in the nature of the case be always predicated with certainty which of the certificated officers of the ship may prove to be specially affected by the result, and inasmuch as without previous service of a copy of the Report, or a statement of the case appended to the Notice upon which the Investigation has been ordered, no certificate can as above mentioned be dealt with, the Inquiry could either have no penal result, or it would have to be commenced *de novo*, were a certificated officer not so served to be found in default.

It will be observed that the authorised form of Notice given in the Appendix to the Rules (page 214) contains no intimation of the time and place of holding the Investigation, but the certificated officers being invariably necessary witnesses, they are also served with a Witness Summons or Subpœna, which sets forth those particulars. (See Rule XI., post, page 113.)

Upon the owner and other persons.

Besides the officers, the owner or other persons may appear to have contributed to the casualty by having sent the ship to sea in an unseaworthy condition or otherwise, and in such cases advantage is taken of the provisions of the Rule which permits the Board of Trade to serve the Notice of Investigation upon such persons. In the varying circumstances of the casualties it is obvious that no inflexible rule can be laid down.

Time of service.

No time is prescribed by the Rules for service of the Notice, but was held by the Wreck Commissioner in the case of the *Vesper* heard on the 21st December, 1876, that four days' notice is sufficient.

Mode of service.

The Rules prescribe no particular mode of service except as to any notice, summons, or other document issuing out of the Court, a description which does not comprise the Notice of Investigation served by the Board of Trade with respect to the certificated officers of the ship. In practice these are always served personally. By section 522 of the Merchant Shipping Act, 1854, it is provided that "Service of any summons or other matter in any legal proceeding under this Act shall be good service,

if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons for him on board any ship to which he may belong with the person being or appearing to be in command or charge of such ship." And by section 35 of the Merchant Shipping Act, 1876, it is provided as follows:—"Where any order, notice, statement, or document requires for the purpose of any provision of this Act ([a]), to be served on the master of a ship, the same shall be served, where there is no master, and the ship is in the United Kingdom, on the managing owner of the ship, or if there is no managing owner, on some agent of the owner residing in the United Kingdom, or where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship. Any such order, notice, statement, or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or in the case of a master by leaving it for him on board the ship with the person being or appearing to be in command or charge of such ship. Any person who obstructs the service of any order, notice, statement, or document on the master of a ship shall incur a penalty not exceeding ten pounds, and if the owner or master of the ship is party or privy to such obstruction he shall be guilty of a misdemeanour" ([b]).

RULE VI.

Rule 6. Parties to the Proceedings.

The Board of Trade, and any certificated officer upon whom a Notice of Investigation has been served, shall be deemed to be parties to the proceedings.

It follows from the above Rule, that the mere service of a Notice of Investigation upon a certificated officer is sufficient to make him a party to the Formal Investigation, and together with the furnishing of the report or statement of the case upon which the Investigation is ordered ([c]), to render him liable to the quasi-penal consequences, defined by the Merchant Shipping Acts and the Rules, in case he be reported guilty of wilful neglect or default causing a casualty or loss of life.

A certificated officer is of course fully cognizant of the circumstances of the casualty in which he has probably been

([a]) The Merchant Shipping Act, 1876, shall be construed as one with the Merchant Shipping Act, 1854, and the Acts amending the same, 39 & 40 Vict., c. 80, s. 2.

([b]) 39 & 40 Vict., c. 80, s. 35.

([c]) 25 & 26 Vict., c. 63, s. 23, sub-sec. 6. See *ante*, page 60.

a more or less prominent actor, and can therefore form a tolerably correct judgment of the manner in which he will be affected by the Investigation, and of the necessity of being represented by an advocate before the Court to defend his interests. In the great majority of cases, the master, with whom the supreme responsibility rests, is the only certificated officer who takes any part in the proceedings, except as a witness, and in many instances even the master is not directly represented.

Rule 7. Persons interested, other than certificated officers.

RULE VII.

Any other person upon whom a Notice of Investigation has been served, and any person who shows that he has an interest in the Investigation, shall have a right to appear, and shall thereupon become a party to the proceedings.

We have seen above (*) that the Board of Trade may cause a Notice of Investigation to be served not only upon the master and officers of the ship, but also upon the owner, and upon any person who may appear to have in way contributed to the casualty. Before these Rules were made under the authority of the Merchant Shipping Act, 1876, the conduct of a Formal Investigation was in the hands of the Court which tried the case, and it rested with the Magistrates to decide who should be allowed to appear, and how the Inquiry should be conducted. They generally held that the owner might appear as well as the master, because the former was directly interested in the results of the Inquiry, and it might lead to his being made liable to third parties, but (as in the case of the *London* steamship) they held that other persons who were quite as much interested in the result, namely, the underwriters, the shippers of goods and passengers, or the representatives of passengers, were not entitled to appear. (Report and Evidence of Royal Commission on Unseaworthy Ships, vol. II., 1874, page 47.) All these persons, if served with a Notice of Investigation, or if, not having been so served, they show that they have an interest in the Investigation, are now, not merely allowed, but entitled to appear, and thereupon they become parties to the proceedings. It will be observed that the Rule is based upon the assumption that the right so accorded is in the nature of a privilege, and it undoubtedly affords to those whom it may concern, an opportunity of defence against imputations of blame. Accordingly the Board of Trade deem it right to give a wide interpretation to the Rule.

All such persons have now a right to appear.

Object of this privilege.

(*) Rule 5, page 107.

It should however be borne in mind that whatever enlargement of the scope of the Investigation the Legislature may hereafter think fit to make, they are not, under the existing law, intended to take the place of the ordinary Courts of Judicature, or to afford a person a cheap or tentative means of fixing others with ulterior liability to make good his losses.

Board of Trade assist in giving a wide interpretation to the Rule.

The Rules originally made in 1876, prescribed that any person claiming to appear by reason of having an interest in the Investigation should file an affidavit showing the nature of his interest before having the right to appear, but in the substituted Rules of 1878, this condition was omitted.

In the case of the *Princess Alice*, heard in October, 1878, the Court, in the absence of objection by the Board of Trade, allowed a relative of a deceased passenger, although not the legal personal representative, to appear upon filing an affidavit. The *Princess Alice*, Report dated 6th November, 1878.

Affidavit showing nature of interest no longer necessary.

It has been held by the Wreck Commissioner, that when owners have appeared under the above Rule, they are then before the Court for all the purposes for which the Court can deal with them, even though they withdraw before the conclusion of the case. The *H. A. Brightman*, Report dated 26th February, 1877. It would indeed be wrong, that having chosen to become parties, they should be allowed to withdraw for the purpose of avoiding the consequences of their choice.

Latitude in construing Rule.

There being no provision for a formal entry of appearance prior to the hearing of the case, the appearance signified by the Rule now under consideration, is the appearance of the party by himself or his representative at the actual hearing of the Investigation. No time has been limited or prescribed for such appearance, and in the case of the *Dinorah* and *Dorunda*, heard on the 30th October, 1876, it was held that a party may appear at any time.

Appearance.

No time prescribed.

Rule VIII.

Rule 8. Parties by permission of the judge.

Any other person may, by permission of the Judge, appear, and shall thereupon become a party to the proceedings.

The object of this Rule doubtless is to embrace every conceivable case in which some reasonable ground for appearance may be made out, not provided for by the preceding Rule 7.

Object of Rule.

Rule IX.

Rule 9. Production of Documents.

A party may give to any other party notice in writing to produce any documents (saving all just

exceptions), relating to the matters in difference between them, and which are in the possession or under the control of such other party; and if the notice is not complied with, secondary evidence of the contents of the documents may be given by the party who gave the notice.

Official documents produced out of the custody of the Board of Trade.

It is obvious that having regard to the nature of an Inquiry into a casualty, there is seldom much documentary evidence to be obtained, and the official papers which bear upon the subject, such as the Order for the Formal Investigation, the official log, and the ship's register, are usually produced out of the custody of the Board of Trade ([a]).

The Rule affords, however, a provision which may be useful in cases where it is material to enquire into the construction or the seaworthiness of the ship and equipments, and the like matters.

It will be observed that the Notice of Investigation itself contains (see Form in Appendix to Rule, page 214) a general notice to the person served to produce to the Court any documents relevant to the case which may be in his possession; in the case of the master, the ship's log; and in the case of all certificated officers, their Board of Trade certificates.

Power of Court to order production of the ship's log.

On objection being taken to the production of the ship's log on the ground that there was no right of discovery given in the Rules, the Wreck Commissioner held that under section 31 of the Merchant Shipping Act, 1876, he had the power given to an Inspector under section 15 of the Merchant Shipping Act, 1854, and therefore that he could order the log to be produced. The *Dinorah* and *Dorunda*, "Solicitor's Journal," XXI., page 9. It would appear, however, that the powers of the Court in such a case would in reality be those which Justices have in summary proceedings before them ([b]), for section 31 of the Merchant Shipping Act, 1876, applies only when the proceedings are under section 448 of the Merchant Shipping Act, 1854. In the case of any recalcitrant conduct by a party to the Investigation, the Court might adjourn and fix him with the costs occasioned thereby. Any expected difficulty of this kind might be obviated by serving a subpœna *duces tecum* issued from the Crown Office in the first instance, which would be enforced in a proper case by the High Court of Justice. *R.* v. *Greenaway*, 7 Q.B. 126, and cases there cited. See also Corner's Crown practice, page 256.

([a]) See post, Rule 13.

([b]) 17 & 18 Vict., c. 104, sec. 433, see *ante*, page 57, and 39 & 40 Vict., c. 80, s. 29, *ante*, page 62.

Statements or examinations of witnesses taken by the Receiver of Wreck for the purposes of the Inquiry have been held to be privileged documents, and are not subject to production, nor can a party to a Formal Investigation require the production of a document in the possession of the Board of Trade, notwithstanding that it may have influenced them in ordering the Inquiry. The *Dinorah* and *Dorunda*, "Solicitor's Journal," XXI., page 9. Privileged Documents.

RULE X.

Rule 10. Notice to admit.

A party may give to any other party notice in writing to admit any documents (saving all just exceptions) and in case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all the costs of proving the documents, whatever may be the result, unless the Court is of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice has, in the opinion of the officer by whom the costs are taxed, been a saving of expense.

RULE XI.

Rule 11. Subpœnas to witnesses.

The Wreck Commissioner may issue subpœnas for the attendance of witnesses either before himself or before any other Judge, and such subpœnas shall be as nearly as possible in the form used in the High Court of Justice, and may be served and shall have effect in any part of the United Kingdom.

In practice no difficulty whatever has been experienced in securing the attendance of seafaring witnesses at a Formal Investigation. The control over them acquired by the payment to them of subsistence money while detained to give evidence, has been found effectual.

The Stipendiary Magistrate and Justices have as before explained (*) the same powers to compel the attendance of witnesses, as if the Investigation were a proceeding within Powers of Stipendiary Magistrate and Justices.

(*) 17 & 18 Vict., c. 104, s. 432. See *ante*, page 57.

the ordinary ([a]) jurisdiction of such Stipendiary Magistrate or Justices for the summary trial of offences.

By 11 & 12 Vict., c. 43, s. 7, Justices in England have power to summon as witnesses persons within their jurisdiction, and, on failure to obey the summons, a warrant may be issued, or, under special circumstances, a warrant may be issued in the first instance. The Justices have also power to commit for refusing to be sworn or examined. Oke's Magist. Syn. I., 145-8.

Powers of Wreck Commissioner.

The power given by the Merchant Shipping Act, 1876 ([b]), to a Wreck Commissioner holding a Formal Investigation, to summon witnesses, is the same as that of the Justices or Stipendiary Magistrate.

Powers in Scotland.

In Scotland the following provision takes effect :—

"In all proceedings under this Act [Merchant Shipping Act, 1854] in Scotland, the Sheriff or Justices of the Peace shall have the same power of compelling attendance of Witnesses and Havers as in cases falling under their ordinary jurisdiction ([c]).

On disobedience to citation in Scotland a warrant may be issued.

Justices in Scotland have also, by 27 & 28 Vict., c. 53, power to summon witnesses within their jurisdiction (section 8) by a citation in the first instance, followed in case of default by a warrant (these being also called letters of first and second diligence), or, in certain cases, by warrant in the first instance.

Powers of Justices in Ireland almost identical with those in England.

In Ireland the powers of Justices with respect to witnesses are almost identical with those in England ([d]).

Rule XII.

Rule 12. Evidence by Affidavit.

Affidavits may, by permission of the Judge, be used as evidence at the hearing, when sworn to in any of the following ways viz. ;

In the United Kingdom, before the Judge, or before a person authorised to administer oaths in the Supreme Court of Judicature, or before a Stipendiary Magistrate, or before a Justice of the Peace for the County or place where it is sworn or made.

In any place in the British dominions out of the United Kingdom, before any Court, Judge, or Justice of the Peace, or any person authorised to administer oaths in any Court in that place.

In any place out of the British dominions, before

([a]) See as to extended jurisdiction of Magistrates, 39 & 40 Vict., c. 80, s. 33.

([b]) 39 & 40 Vict., c. 80, s. 29. See *ante*, page 62.

([c]) 17 & 18 Vict., c. 104, s. 535.

([d]) See 14 & 15 Vict., c. 93, s. 13.

a British Minister, Consul, Vice-Consul, or Notary Public, or before a Judge or Magistrate, whose signature is authenticated by the official seal of the Court to which such Judge or Magistrate is attached.

Upon an affidavit being tendered by the Board of Trade to be read as evidence of contradiction, objection was made by the master that if so used opportunity should be given him of cross-examination. The affidavit was, however, admitted under the above Rule for what the evidence was worth, even though it appeared that it at least involved some contradiction. The *Vesper*, Report of Court dated 21st December, 1876.

Protests.

The protest of the master, although formally deposed to, cannot be received as evidence in the Courts of the United Kingdom on behalf of the owner or master of the ship, but it may be evidence against them. *Rex* v. *Scriveners Co.*, 10 B. & C. 511; and *Senat* v. *Porter*, 7 Term Rep. 158.

Service proved by affidavit.

Service of the Notices of Investigation and the appended statutory Report or Statement of the Case (a) is frequently proved by affidavit under the provisions of Rule 25 (b).

Evidence by affidavit under Merchant Shipping Act, 1854, sec. 270.

Evidence by affidavit is also admissible in the following circumstances:—" Whenever in the course of any legal proceedings instituted in any part of Her Majesty's Dominions before any Judge or Magistrate, or before any person authorised by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject matter of such proceeding, then upon due proof, if such proceeding is instituted in the United Kingdom, that such witness cannot be found in that Kingdom, or if in any *British* Possession that he cannot be found in the same Possession, any deposition that such witness may have previously made on oath in relation to the same subject matter before any Justice or Magistrate in Her Majesty's Dominions, or any *British* Consular Officer elsewhere, shall be admissible in evidence, subject to the following restrictions; (that is to say),

" (1.) If such deposition was made in the United Kingdom, it shall not be admissible in any proceeding instituted in the United Kingdom;

" (2.) If such a deposition was made in any *British* Possession, it shall not be admissible in any proceeding instituted in the same *British* Possession;

" (3.) If the proceeding is criminal it shall not be admissible unless it was made in the presence of the person accused;

(a) See *ante*, Rule 5, page 107.
(b) See post, page 129.

"Every deposition so made as aforesaid shall be authenticated by the signature of the Judge, Magistrate, or Consular Officer before whom the same is made; and such Judge, Magistrate, or Consular Officer shall, when the same is taken in a criminal matter, certify, if the fact is so, and that the accused was present at the taking thereof, but it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and in any criminal proceeding such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified; but nothing herein contained shall affect any case in which depositions taken in any proceeding are rendered admissible in evidence by any Act of Parliament, or by any Act or Ordinance of the Legislature of any Colony, so far as regards such Colony, or to interfere with the power of any Colonial Legislature to make such depositions admissible in evidence, or to interfere with the practice of any Court in which depositions not authenticated as hereinbefore-mentioned are admissible" (a).

Missing ships.

Having regard to the fact that seamen have frequently no fixed place of residence, or are habitually absent from the United Kingdom, the above is a valuable provision. It is especially useful in cases where it is necessary to prove the mode of stowage, or the nature and bulk of a cargo, when a ship has been laden at a foreign port. In the case of a Formal Investigation into the loss or supposed loss of what is called a "missing ship" under the provisions of section 32, sub-sec. 2, of the Merchant Shipping Act, 1876, such evidence is often the only testimony procurable to prove "the circumstances under which a ship proceeded to sea or was last heard of" (b) and its use for that purpose has now become so habitual that it may be considered the settled practice of the Courts to admit it.

RULE XIII.

Rule 13. Proceedings in Court. Presence of parties served.

At the time and place appointed for holding the Investigation, the Court may proceed to hear and adjudicate upon the case, whether the parties, upon whom a Notice of Investigation has been served, or any of them, are present or not.

Two parts of a Formal Investigation.

There are two parts of a Formal Investigation, though it is one proceeding throughout. The first is that of an Inquiry into the causes of the casualty, or, as it has been

(a) 17 & 18 Vict., c. 104, s. 270.
(b). 39 & 40 Vict., c. 80, s. 32, sub-sec. 2. See *ante*, page 63.

called, an "Inquest on the Ship." The second, which is that of a trial of issues raised by the Board of Trade, takes a definite shape when the representative of the Board proceeds to formulate from the evidence previously given, the questions or issues upon which they desire the opinion of the Court, whether in reference to the causes of the casualty, or the conduct of any person connected therewith. (See Rule 16, post, page 119.) Under the Rules of 1876, now repealed, a formal charge was made if the circumstances appeared to warrant it, by way of raising the questions or issues above described, and the Wreck Commissioner held that the Inquiry was one continuous proceeding from beginning to end, and that the Court sat for the purposes of the whole Inquiry, and not merely to try the charge formulated in the midst of the proceedings. The *Dinorah* and *Dorunda*, "Solicitor's Journal," XXI., page 9.

Investigation one continuous proceeding.

The proceedings in Court are commenced by the representative of the Board of Trade putting in the Order for the Formal Investigation ([a]), the ship's register ([b]), the official log ([c]), and also tendering any charts or maps which may be necessary for the assistance of the Court. Affidavits of service of Notices of Investigation are also usually put in at this stage. (See Rule 12, *ante*, page 114.) Until recently the certificates of the master and officers were also called for and put in under section 438 of the Merchant Shipping Act, 1854. That section has, as we have seen, after being modified by the Act of 1862, been now virtually repealed by section 3 (4) of the Shipping Casualties Investigations Act, 1879 ([d]). The certificates are not now called for until the conclusion of the Inquiry, and then only in case the Court shall have actually suspended or cancelled them.

Commencement of proceedings.

It is also customary to give a slight outline of the case before proceeding to the examination of witnesses.

Opening statement.

These preliminaries having been observed, the examination of witnesses is proceeded with as prescribed by the succeeding Rules.

In a case of collision between two vessels it was held that

([a]) *Ante*, page 103. The Order has been held by the Wreck Commissioner to be admissible without proof, *Dinorah* and *Dorunda*, "Solicitor's Journal," XXI., page 9. The Order is invariably signed by an Assistant-Secretary to the Board of Trade, and as such is receivable in evidence under s. 7, Merchant Shipping Act, 1854, 17 & 18 Vict., c. 104.

([b]) The original or an examined or certified copy is admissible in evidence, and *primâ facie* proof of certain matters. 17 & 18 Vict., c. 104, s. 107.

([c]) Entries in any official log shall be received in evidence. 17 & 18 Vict., c. 104, s. 285.

([d]) See *ante*, page 65.

Witnesses being certificated officers cannot be ordered out of Court.

such of the witnesses of the opposing parties as were certificated officers could not be ordered out of Court, on the ground that they were, or might become, parties to the proceedings, to whom the Rule as to excluding witnesses from the Court did not apply. The *Dinorah* and *Dorunda*, "Solicitor's Journal," XXI., page 9.

RULE XIV.

Rule 14. Examination of witnesses.

The Board of Trade shall first produce any witnesses whom they may wish to examine, and who can give material evidence in regard to the casualty, whether they were or were not on board the ship at the time.

Principles of evidence.

Upon the general subject of evidence in connection with Formal Investigations there are some observations in "Simmons on Courts Martial," which are entirely applicable. It is there stated as follows :—

"The Rules of evidence in the Criminal Courts of England * * * * are those which guide Courts Martial. Mr. Serjeant Marshall when he appeared for Serjeant Grant in the Court of Common Pleas, 'assumed that a Court Martial was a creature of the Mutiny Act,' and laid it down as an indisputable principle, the truth of which it would indeed be difficult to combat, 'that whenever an Act of Parliament erects a new judicature, without prescribing any particular rules of evidence to it, the Common Law will supply its own rules, from which it will not allow such newly erected Court to depart.' (2 "Blackstone's Reports," 27.) The English law of evidence so established is equally binding upon Courts Martial when held beyond the jurisdiction of the English Courts, even when held in Scotland, where, as stipulated at the Union, the civil courts are governed by the Scotch Law." Simmons on Courts Martial, 7th ed., pp. 330-1.

In the great majority of cases the witnesses who can give material evidence in regard to the casualty, are necessarily those who were on board the ship at the time, but the Rule has no doubt been framed in substitution for a less elastic Rule made in 1876, in order to adapt the procedure more readily to the varying circumstances of the Inquiry.

Order of examination of witnesses.

In the first case heard after the publication of the Rules in 1876 (now repealed), the Wreck Commissioner laid down the order in which the witnesses should be questioned by Counsel for the several parties ; he directed that the Counsel for the Board of Trade should first examine ; the Counsel for the ship from which the witnesses came should next follow ; then (the case being one of collision), the Counsel for

the owners and officers of the other ship, and that as the dispute between the respective owners, &c., was not before the Court, and the Court was sitting at that stage for Inquiry only, and had not as yet any charge before it, Counsel might cross-examine those who on a trial would be their own witnesses; that the Counsel for the ship from which the witnesses came might then re-examine, and the Counsel for the Board of Trade re-examine in conclusion. The *Dinorah* and *Dorunda*, "Solicitors' Journal," XXI., page 9.

Questions in the nature of cross-examination.

Certains questions were put during the examination of witnesses in the same case by the Counsel for the Board of Trade, to which objection was made that they were in the nature of a cross-examination, *e.g.*, the third officer of one of the ships was asked as to his statement made on oath to the Receiver of Wreck. The Wreck Commissioner over-ruled the objection, and referring to the somewhat analogous procedure in the Prize Court, when the captor produces witnesses from the captured ships, held that the Counsel for the Board of Trade, who, at that stage of the Inquiry, appeared rather for the general public than for any party, might put questions of an inquisitorial character if necessary and material for eliciting the facts of the case.

Master may be asked to what cause he attributed the casualty.

The Wreck Commissioner also held that a master might be asked the question to what cause he attributed the casualty under investigation even though his certificate was likely to be placed in jeopardy.

Rule XV.

Rule 15. Cross-examination and re-examination of witnesses.

The witnesses shall be cross-examined by the parties in such order as the Judge may direct, and may be re-examined by the Board of Trade.

The subject-matter of this Rule has been already explained in treating of the proceedings under Rule 14.

Rule XVI.

Rule 16. Questions for the opinion of the Court.

On the completion of their examination, the Board of Trade shall state in open Court upon what questions in reference to the causes of the casualty, and the conduct of any persons connected therewith, they desire the opinion of the Court; and if any person whose conduct is in question is a certificated officer, they shall also state in open Court whether in their opinion his certificate should be dealt with.

Rule 16. Questions for the opinion of the Court.

It has been seen that the Merchant Shipping Act, 1876, prescribes that every Formal Investigation shall be conducted in such manner that if a charge is made against any person that person shall have an opportunity of making a defence. ([a]) By Rule 15 of the Shipping Casualties Rules, 1876, issued shortly after the passing of the above Act, but now repealed ([b]), it was provided that on the completion of the examination of the witnesses called by the Board of Trade, the Board of Trade should state in writing whether they had any, and if so, what charge to make against any person, and against whom. Some difficulty ([c]) was felt in practice in formulating charges against persons (other than certificated officers) with respect to whom the Court was clothed with no other jurisdiction than that of inflicting costs. That subject was accordingly reconsidered in the preparation of the Shipping Casualties Rules, 1878, and the above Rule was substituted for Rule 15 of 1876. Whether the operation of the new Rule has been found to be perfectly equitable in all respects, is a question which may more properly be discussed elsewhere. The effect of the later Rule is that the Court is not now limited to the strict consideration of formal and technical charges, but is at liberty to take a broad survey of the facts of the case with a view to report upon them in accordance with the statutes ([d]) for the purposes which the Inquiries were intended to serve. The Board of Trade enjoys a similar freedom in framing questions which raise the real issues involved in a casualty, whether those issues relate simply to the supposed cause of loss, or implicate in addition the conduct of any person connected with the casualty, as constituting in itself the cause of loss, or as contributing to the casualty. The Board of Trade are bound, if they call in question the conduct of a certificated officer, to state in open Court whether in their opinion his certificate should be dealt with. The result is that every question which is fairly suggested by the circumstances of a casualty is now raised, in order to enable the Court to make a complete and exhaustive report, and to direct attention, if possible, to means of future precaution. At the same time, it is a primary object of concern to comply with the statutory provision which secures to persons, against whom a charge is made, an opportunity of making a defence. The questions submitted to the Court, and having reference to the facts as they appear from the evidence then adduced,

([a]) 39 & 40 Vict., c. 80, s. 30. See *ante*, page 62.
([b]) Rule 26, Shipping Casualties Rules, 1878, post, page 129.
([c]) See observations on this subject *ante*, Chapter on Jurisdiction, page 100.
([d]) See *ante*, page 101.

afford to all parties full information of what are the issues which affect them, and how they do so, and in addition when the Board of Trade raises a question of a certificate being dealt with, its representative is instructed to give such precision to the questions propounded under the above Rule, as to put the officer upon full notice of the failure of duty of which he is accused. Objection has sometimes been made, by way of general criticism, to the number and range of the questions so raised on the part of the Board of Trade. So far as such criticism may be well founded, it may usefully take the form of specific objections to be submitted to the Court on behalf of the party aggrieved.

Statement of questions always made in writing.

It will be observed that the Rule does not in terms require the statement of questions to be made in writing; indeed the expression "shall state in open Court" might possibly suggest the contrary inference. But the Board of Trade have always held themselves required, as well by analogy with all other proceedings, both civil and criminal, as by the obligation to afford to parties implicated the fullest opportunity of making a defence, to deliver the questions in writing.

In a case heard almost immediately after the Rules of 28th July, 1878, came into operation, the Wreck Commissioner expressed an opinion that it was desirable to frame the questions in writing, although the new Rules did not make that course obligatory. The *Leader*, reported in the *Times* of November 15th, 1878.

Two Inquiries may be heard together when the same officer is concerned, even if the casualties happened on different voyages. Upon a statement of questions under the above Rule being handed in, the first eight relating to the first, and the last seven to the second casualty, the questions being numbered consecutively, and followed by an application that the certificate of an officer should be dealt with, the Wreck Commissioner held that the application related to both casualties and was sufficient to justify the suspension of the certificate for a wrongful act or default in regard to the first casualty alone. The *Amcott*, *Law Times*, October 29th, 1881. Report dated September 30th, 1881.

General principle of framing questions.

The following passage in "Simmons on Courts Martial" may be quoted as laying down a general principle in analogy to which the questions or issues raised in a Formal Investigation should be framed:—

"The Judge Advocate-General on the trial of Colonel Quentin (Printed trial, page 81), very clearly pointed out the general principle which is applicable to the subject of framing charges. It is well known by everybody, that in the case of charges brought before a Court Martial, they are not bound to the technical formalities which prevail in other

Courts of Law: but there is this essential principle in every charge, before any Court that can exist in the civilized world, that the charge should be sufficiently explicit to enable the person to know what he is to answer, and to enable the Court to know what they are called to enquire into." (Simmons on Courts Martial, 7th Ed., page 161.)

Same principle embodied in the Queen's Regulations relating to Naval Courts Martial.

The same general principle is embodied in Article 2 of the Queen's Regulations relating to Naval Courts Martial :—" Every offence consists of certain acts done or omitted under certain circumstances, and all the ingredients of the offence should be set forth with sufficient certainty and precision to inform the accused of the specific allegations to be met, and the Court of the specific subject of Inquiry." Thring's Criminal Law of the Navy, 2nd Ed., page 71.

The circumstances attending casualties to ships necessarily differ very widely. It is difficult therefore to adopt any great degree of uniformity in framing the questions to be submitted for the opinion of the Court, but the forms used in several cases have been collected in the Appendix, page 557.

By means of questions properly framed, the advantage is secured of treating these Investigations without pleadings and without any unnecessary forms or delays.

Signature and delivery of questions.

The questions are signed by the representative of the Board of Trade, one signed copy being handed to the officer of the Court, and one or more signed copies (as the case may be) being delivered to the person or persons whose conduct may be called in question.

It will be observed that if the conduct of a certificated officer is in question, the Board of Trade are bound by the Rule to " state in open Court " whether, in their opinion, his certificate should be dealt with.

Case of the *Brazilian*.

In the case of the *Brazilian*, an Inquiry held before the Stipendiary Magistrate of Shields before the repeal of the Rule requiring a formal charge, an intimation was made by the representative of the Board of Trade, at the proper stage of the proceedings, to the master's solicitor, that no charge would be preferred against his client. The master thereupon retired from the Court, but the Magistrate, desiring further inquiry, demanded his subsequent attendance. On application being made to the Court of Queen's Bench for a prohibition to restrain the Magistrate from proceeding further, on the ground that the Board of Trade had decided not to formulate any charge against the master, the Court refused the application, holding that the Magistrate was independent of the Board of Trade, and his power to proceed could not be affected by their action in not charging the master with default. The Magistrate accordingly proceeded with the Investigation, and

on the succeeding day expressed an opinion, that notwithstanding the formal intimation by the Board of Trade, such a charge ought to be preferred, and it was accordingly done. The master was found in default, and his certificate was suspended for three months. Upon that Order being brought up by certiorari before the Court of Queen's Bench, it was quashed, on the ground that an intimation having been formally made by the Board of Trade to the master in the first instance that no charge would be preferred against him, the Counsel for the Board of Trade cannot charge him, even on the suggestion of the Judge, and under the sanction of the Board of Trade. *Ex parte Minto*, 35 L.T. Rep. N.S. 808; "Solicitors' Journal," vol. XXI., page 274; 25 W.R. 251.

After formal notification to the master that his conduct is not to be questioned he cannot be charged.

In the case of the *Cymba* and *Vigilant*, heard on the 13th Nov., 1876, a "charge" was made against the master of a vessel (under the repealed Rules of 1876), in that he was guilty of default by the non-observance of Articles 15, 16, and 20 of the Regulations for preventing Collisions at Sea; but without more particularly specifying the default charged. Upon objection made on behalf of the master, it was held that he was not entitled to a more specific charge, as no practical inconvenience or injury would be caused to him for want of it.

Particulars of charges under Rules for preventing collisions at sea.

Rule XVII.

Rule 17. Examination of further witnesses and order of examination.

The Board of Trade and any other party may thereupon produce further witnesses, who shall be examined, cross-examined, and re-examined, in such order as the Judge may direct.

The issues having been raised by the proceedings under the last Rule, the second stage of the Investigation is entered upon for the trial of those issues. This Rule is obviously intended to, and does afford persons against whom charges are made ample opportunity of defence. It is competent for the Board of Trade and any other party to produce further witnesses, but in practice the evidence is generally completed during the first stage of the Investigation, and this being one proceeding throughout, the evidence is not repeated. It is, however, open to the parties to recall witnesses already examined, and in practice it is often done.

The above Rule is in substitution for Rules 18, 19, and 20 of the Rules of 1876. In a case (the *Vigilant*, "Solicitors' Journal," XXI., page 31), heard under those Rules, the Wreck Commissioner held that the order of examination

after the issues had been raised, should be the same as before ([a]).

RULE XVIII.

Rule 18. Conclusion of evidence, order of addressing Court, reply of Board of Trade.

When the whole of the evidence is concluded, the parties shall be heard in such order as the Judge may direct, and the Board of Trade shall be heard in reply.

Objection having been taken that a person whose conduct was not in question was not entitled to be heard, the Wreck Commissioner held that as it was the duty of the Court to report to the Board of Trade upon the whole case, and not merely as to the charge made, all parties appearing were entitled to be heard under Rule 20 of 1876 (now repealed). The *Dinorah* and *Dorunda*, "Solicitors' Journal," XXI., page 9.

Accordingly the owner of the ship lost was first heard, then the person charged, and finally the Board of Trade was heard in reply.

The same order is usually observed under the existing Rules.

RULE XIX.

Rule 19. Adjournment of Court.

The Judge may adjourn the Court from time to time and from place to place, as he may think fit.

RULE XX.

Rule 20. Decision of the Court.

Except when the certificate of an officer is cancelled or suspended, in which case the decision shall always be given in open Court, the Judge may deliver the decision of the Court either *viva voce* or in writing; and, if in writing, it may be sent or delivered to the respective parties, and it shall not be necessary to hold a Court merely for the purpose of giving the decision.

The excepted case mentioned above, is that in which the Statute renders it compulsory that the decision of the Court with respect to cancelling or suspending certificates, shall always be stated in open Court at the conclusion of the case or as soon afterwards as possible ([b]).

([a]) As to order during first stage. See *ante*, page 118.
([b]) 25 & 26 Vict., c. 63, s. 23, sub-sec. 3. See *ante*, page 60.

RULE XXI.

Rule 21. Order for costs.

The Judge may, if he thinks fit, order the costs and expenses of the proceedings, or any part thereof, to be paid by either the Board of Trade, or by any other party to the proceedings. Form of Order for payment of costs will be found in the Appendix [to the Rules] (a) No. 2.

This Rule has been framed in order to give effect to the powers conferred upon Courts of Formal Investigation by section 436 of the Merchant Shipping Act, 1854 (b), although the Rule purports to authorize an order for the payment of expenses as well as costs.

By the terms of that section the Justices or Magistrates (c) alone have power to make orders with regard to costs, the Assessors having no jurisdiction whatever in that respect.

Assessors have no jurisdiction with respect to costs.

The proceedings of a Formal Investigation are, as we have seen, promoted by the Board of Trade under direct statutory authority, and on public grounds. Accordingly, the witnesses are summoned, and their expenses are defrayed by the Board of Trade, who are empowered to pay the whole expense of an Inquiry, *mero motu*, if in any case they think fit to do so, and without an order (d).

Witnesses summoned and paid by the Board of Trade.

Prior to the passing of the Merchant Shipping Act, 1876, it was unusual to make any order for payment of costs, but occasionally a master who was found guilty of a grave default, or who, being blameable, held no certificate which could be cancelled or suspended, was ordered to pay a portion of the costs of an Investigation. Orders were also made against owners, but owing to the fact that they were not under the then existing law "parties" to the Investigation, the orders could not be enforced against them. This difficulty has now been obviated (e) by the Rules made under the authority of the Merchant Shipping Act, 1876.

Orders for costs against masters.

Against owners.

The principle upon which the Wreck Commissioner will act in ordering costs to be paid by the Board of Trade, was explained in one of the early cases heard by him. He expressed his opinion that the power to order the Board to pay costs was only intended to be exercised in a case where there was no foundation for the charge, or for any Inquiry at all. The *Vigilant* "Solicitors' Journal," XXI., page 31.

Against the Board of Trade

(a) See Appendix, page 215.
(b) 17 & 18 Vict., c. 104, and see *ante*, page 58.
(c) And the Wreck Commissioner by virtue of 39 & 40 Vict., c. 80, s. 29. See *ante*, page 62.
(d) 17 & 18 Vict., c. 104, s. 436, page 58.
(e) See *ante*, page 109, *et seq.*

Order for Costs.

On the other hand many cases have occurred in which the master or owner has been ordered to pay costs.

It has been seen that the language of section 436 of the Merchant Shipping Act, 1854, under which the above Rule was framed, is very wide, and the Court in exercising the judicial discretion thus conferred upon it, will no doubt be guided by the considerations which ordinarily influence other tribunals, such as the conduct of the parties in the course of the Investigation, the extent to which that conduct may have increased the expense of the proceedings, and the like. But the Inquiry itself may have been the result of conduct on the part of persons (a) other than certificated officers, which caused or conduced to the casualty. This would, it is conceived, afford substantial ground on which to order the payment of costs as against any such persons who are parties to the Investigation.

Grounds for ordering Costs.

Mode of recovery.

The mode of recovery of costs when ordered may be conveniently referred to here.

By section 436 of the Merchant Shipping Act, 1854 (b), it is enacted that such costs "shall be recoverable in the same manner as other costs incurred in summary proceedings" before Justices. The manner of recovery is provided by 11 & 12 Vict., c. 43, ss. 18 and 26.

Recovery of costs in Scotland.

The law as to costs in Scotland is to be found in 27 & 28 Vict. c. 53, and by section 22 of that Act, judgment may be given for expenses, if necessary, by a separate judgment, in such form as may be appropriate. But there is no provision for enforcing such judgment, except impliedly, under section 18, allowing poinding and sale (the Scotch equivalent of *fi. fa.*) or imprisonment. But it is doubtful if imprisonment is now competent for the recovery of costs alone, since the abolition of imprisonment for civil debt, 43 & 44 Vict., c. 34.

In Ireland.

In Ireland the recovery of costs ordered by Justices to be paid is regulated by 14 & 15 Vict., c. 93, s. 22

Additional powers.

The following additional power for the recovery of "sums of money" ordered to be paid by any Court, Justice, or Magistrate is given by section 523 of the Merchant Shipping Act, 1854:—"In all cases where any Court, Justice or Justices of the Peace, or other Magistrate, has or have the power to make an order directing payment to be made of any seaman's wages, penalties, or other sums of money, then, if the party so directed to pay the same is the master or owner of a ship, and the same is not paid at the time and in manner prescribed

(a) As to jurisdiction in the case of such persons, see *ante*, page 98.

(b) 17 & 18 Vict., c. 104. See *ante*, page 58.

in the order, the Court, Justice or Justices, or other Magistrate, who made the order, may, in addition to any other powers they or he may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress or poinding and sale of the said ship, her tackle, furniture, and apparel." Costs.

The mode of recovery of costs provided by section 436 does not seem to be exclusive, for they are there only made "recoverable" in the manner in which they are usually recoverable. The above section would seem to have been enacted with the object of giving Justices and others, in view of the peculiar class of persons with whom the Act deals, additional power of enforcing their orders. Costs ordered to be paid are "sums of money," and the use of the word "other" in the section following such dissimilar matter as seamen's wages and penalties, should not have the effect of excluding costs from the operation of the section. It is submitted that they are within it.

No special power has been conferred upon the Court of delegating the taxation of the costs, and it is necessary from the form of the order, the analogy to the orders of the Courts, which have no power of delegation, and probably from the provision of Jervis's Act ([a]) that the amount should be mentioned in the order. The fixing of the amount, or taxation, is a judicial act, *Reg.* v. *Recorder of Cambridge*, 8 El. & Bl., 637; 27 L.J. M.C. 160, and as such must be performed by the Court of itself, cannot be delegated, and must be done by the Court before it finally disposes of the case. *Sellwood* v. *Mount*, 1 Q.B. 726; *Reg.* v. *Long*, 1 Q.B., 740. It would seem, however, that the Court may order its Clerk to ascertain the amount, adopt his estimate as its own act, and insert the sum in its order. *Sellwood* v. *Mount*, 1 Q.B. 735; *Ex parte* Holloway, 1 Dowl. P.C. 26. As to taxation.

Rule XXII.

At the conclusion of the case the Judge shall report to the Board of Trade ([b]). Form of the Report will be found in the Appendix [to the Rules], No. 3 ([c]). Rule 22. Report to the Board of Trade.

This is a very essential part of the procedure. Not only or chiefly is it necessary with a view to the entry upon the record of certificates in pursuance of section 138 of the Objects of the Report.

([a]) 11 & 12 Vict., c. 43.
([b]) See *ante*, page 101.
([c]) See Appendix, page 215.

Report to Board of Trade.

Merchant Shipping Act, 1854, of any dealing with a certificate by cancellation or suspension ([a]), but the Board of Trade may, if they think the justice of the case requires it, re-issue or return the certificate, or shorten the time of its suspension, or they may grant a new certificate of the same or any lower grade ([b]). Again, the Board of Trade may think fit to take some action against persons whose conduct may have been reported upon by the Court, or the Report may contain some suggestive lesson for future action or safeguards ([c]). The reports are published for the information of those interested in shipping.

Must be sent to Board of Trade.

Accordingly, as we have seen ([d]), the Court is required in all cases to report to the Board of Trade.

The form given in the Appendix to the Rules consists of the Report proper, and the Annex to it. Both parts should be signed by the "Judge," and by such of the Assessors as concur therein. If any Assessor do not so concur, he is required by statute to report to the Board of Trade his reasons for dissenting ([e]).

Assessors dissenting.

RULE XXIII.

Rule 23. Computation of time.

In computing the number of days within which any act is to be done, they shall be reckoned exclusive of the first day and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or good Friday, or on a day appointed for a public Fast or Thanksgiving, in which case the time shall be reckoned exclusive of that day also.

RULE XXIV.

Rule 24. Service of notices, &c.

Any notice, summons or other document issuing out of the Court may be served by post.

Application of Rule.

It will be observed that this Rule does not apply to the Notice of Investigation mentioned in Rule 5. It is to be served by the Board of Trade and does not issue out of the Court ([f]).

([a]) See Appendix, page 388.
([b]) 25 & 26 Vict., c. 63, s. 23, sub-sec. 4. See *ante*, page 60.
([c]) See further as to the Report, *ante*, page 101.
([d]) The statutory provisions on the subject of the Report are stated at pages 58, 60 and 63.
([e]) 39 & 40 Vict., c. 80 s. 30. See *ante*, page 63.
([f]) See *ante*, page 107.

RULE XXV.

Rule 25. Proof of service of notice, &c.

The service of any notice, summons, or other document may be proved by the oath or affidavit of the person by whom it was served.

The formalities to be observed in regard to affidavits to be used at a Formal Investigation are set forth in Rule 12 (a).

RULE XXVI.

Rule 26. Repealing clause.

The Shipping Casualties Rules, 1876, except as to the cases in which an order for a Formal Investigation shall have been made previous to the 1st day of October, 1878, are hereby revoked (b).

(a) See *ante*, page 114.
(b) The above Rules are dated 28th July, 1878.

CHAPTER VII.

INVESTIGATIONS INTO THE CONDUCT OR COMPETENCY OF MASTERS, MATES, AND ENGINEERS BY LOCAL MARINE BOARDS OR TRIBUNALS SPECIALLY APPOINTED BY THE BOARD OF TRADE.

In addition to the Inquiries into the conduct of certificated officers which take place as part of, or in connection with, a Formal Investigation into a shipping casualty, in which the conduct of the officers is in strictness a subsidiary question, there are Inquiries in which the conduct and competency of an officer are the main subject of the investigation. In such cases a casualty may or may not have happened to his ship, and even if it has occurred, it may only form an incidental subject for investigation.

Enactments now in force.

The particular enactments upon which these Inquiries depend are the following:—

17 & 18 Vict. c. 104, sec. 241. (Merchant Shipping Act, 1854.)

"If the Board of Trade or any Local Marine Board has reason to believe that any master or mate is from incompetency or misconduct unfit to discharge his duties, the Board of Trade may either institute an Investigation or may direct the Local Marine Board at or nearest to the place at which it may be convenient for the parties and witnesses to attend to institute the same, and thereupon such persons as the Board of Trade may appoint for the purpose, or, as the case may be, the Local Marine Board, shall, with the assistance of a local Stipendiary Magistrate (if any), and if there is no such Magistrate of a competent legal assistant to be appointed by the Board of Trade, conduct the Investigation, and may summon the master or mate to appear, and shall give him full opportunity of making a defence either in person or otherwise, and shall for the purpose of such Investigation have all the powers given by the first part of this Act to Inspectors appointed by the Board of Trade, and may make such order with respect to the costs of

such Investigation as they may deem just; and shall, on the conclusion of the Investigation, make a report upon the case to the Board of Trade; and in cases where there is no Local Marine Board before which the parties and witnesses can conveniently attend, or where such Local Marine Board is unwilling to institute the Investigation, the Board of Trade may direct the same to be instituted before two Justices or a Stipendiary Magistrate; and thereupon such Investigation shall be conducted, and the results thereof reported, in the same manner and with the same powers in and with which Formal Investigations into wrecks and casualties are directed to be conducted, and the results thereof reported, under the provisions contained in the eighth part of this Act, save only that, if the Board of Trade so directs, the person bringing the charge of incompetency or misconduct to the notice of the Board of Trade shall be deemed to be the party having the conduct of the case."

17 & 18 Vict., c. 104, sec. 241.

"The power by the 241st section of the Principal Act given to the Board of Trade or to any Local Marine Board of instituting Investigations into the conduct of any master or mate whom it has reason to believe to be from incompetency or misconduct, unfit to discharge his duties, shall extend to any certificated engineer whom the Board of Trade or any Local Marine Board has reason to believe to be, from incompetency or misconduct unfit to discharge his duties, in the same manner as if in the said section the words 'certificated engineer' had been inserted after 'master' wherever 'master' occurs in such section."

25 & 26 Vict., c. 63, sec. 11. (Merchant Shipping Act Amendment Act, 1862.)

"In every case of collision between two vessels it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any), to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any), such assistance as may be practicable, and as may be necessary in order to save them from any danger caused by the collision; and also to give to the master or person in charge of the other vessel the name of his own vessel, and of her

36 & 37 Vict., c. 85, s. 16. (Merchant Shipping Act, 1873.

36 & 37 Vict., c. 85, s. 16.

port of registry, or of the port or place to which she belongs, and also the names of the ports and places from which and to which she is bound.

"If he fails so to do, and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default.

"Every master or person in charge of a British vessel who fails without reasonable cause, to render such assistance or give such information as aforesaid shall be deemed guilty of a misdemeanour, and if he is a certificated officer an inquiry into his conduct may be held and his certificate cancelled or suspended."

For the sake of convenience the several tribunals above described are all referred to in this chapter as the "Court of Inquiry."

Constitution and Powers of the Court.

The constitution of the Court is determined in each case by the Board of Trade.

The Board of Trade, it is apparent from the section (241) above printed, may either institute the Inquiry itself and so keep a certain amount of control over the constitution of the Court, or may direct the Local Marine Board to institute the Inquiry. Probably the first named power was given with a view to cases whose difficulty or importance made a special tribunal desirable. Where there is no Local Marine Board within convenient reach, or it is unwilling to obey the direction of the Board, the Investigation may be confided to a Stipendiary Magistrate, or two Justices. The section is not logically consistent, but the object of the legislature seems to have been to provide primarily a kind of domestic tribunal provided with legal assistance, and having the power to regulate its own procedure, with an alternative Court armed with the powers of the tribunals created by the eighth part of the Act and subject to the Rules controlling their procedure.

The Court of Inquiry may consist of:—

A.—Persons appointed by the Board of Trade and a Stipendiary Magistrate, or, where there is no such Magistrate, a competent legal assistant;

B.—The Local Marine Board and a Stipendiary Magistrate, or, where there is no such Magistrate, a competent legal assistant;

C.—Two Justices;

D.—A Stipendiary Magistrate.

Local Marine Board the tribunal usually selected.

In practice the tribunal selected by the Board of Trade is almost invariably of the second class above-mentioned, viz., a Local Marine Board, with a Stipendiary Magistrate or legal assistant. At the time when Sir T. H. Farrer gave his evidence before the Select Committee of 1860, the Board of Trade had in no case appointed a special tribunal of the third class above-mentioned ([a]), but a few cases have since occurred in which they have exercised that power; an instance occurred in the year 1878 in which the Principal Officer of the Board of Trade for the district and a Principal Officer of Customs assisted by a local Stipendiary Magistrate were appointed by the Board of Trade to conduct an Investigation into alleged drunkenness on the part of the master ([b]). The tribunal so composed proved satisfactory and ensured a fair trial to the accused.

Acts of Parliament by which Local Marine Boards are constituted.

The constitution of the Local Marine Boards themselves is regulated by the Merchant Shipping Act, 1854, sections 110 to 121, both inclusive,([c]) and the Merchant Shipping Act Amendment Act, 1862, section 14 ([d]).

The particular Board which is to institute the Inquiry is to be that "at or nearest the place at which it may be convenient for the parties and witnesses to attend." This is a somewhat vague description; practically it must rest with the Board of Trade to determine which Local Marine Board possesses the requisite qualification. If there is no Local Marine Board, or the selected Board is unwilling to institute an Inquiry, the Board of Trade may, by way of substitution, direct an Investigation before a Stipendiary Magistrate or two Justices.

The functions of the Wreck

In the Merchant Shipping Act, 1876, by which

([a]) Report and Evidence of Select Committee of 1860, pp. 540-41.
([b]) Case of the master of the brig *C*——, heard at a South Wales port on the 7th May, 1878.
([c]) 17 & 18 Vict., c. 104.
([d]) 25 & 26 Vict., c. 63.

Commissioner do not extend to these Investigations.

the office of Wreck Commissioner was created, there is no reference to the above provisions, his functions being expressly confined to Investigations into shipping casualties under the eighth part of the Merchant Shipping Act, 1854 (a). It would, however, be within the power of the Board of Trade to name him as one of the members of a Court of the first class above enumerated.

Question as to Assessors being necessary.

A question may be raised whether, in certain circumstances, Assessors are a necessary part of the constitution of the Court. Cases may arise where the competency or conduct of a master, mate or engineer is called in question, and investigated under section 241 of the Merchant Shipping Act, 1854, although the alleged incompetency or misconduct does not occur in connection with a casualty, and the circumstances may nevertheless be such as to render it desirable to inquire into the matter before two Justices or a Stipendiary Magistrate, with the assistance of skilled Assessors (b). There is an express enactment in the Merchant Shipping Act Amendment Act, 1862, that in the case of Investigations conducted by Justices or a Stipendiary Magistrate, a certificate shall not be cancelled or suspended thereunder unless one Assessor at least expresses his concurrence in the report to the Board of Trade (c). That report is an element in an Inquiry which is common both to a Formal Investigation under part 8 of the Merchant Shipping Act, 1854, and to an Investigation under section 241 of that Act. The latter section contains no reference whatever to Assessors, and provides no machinery for their appointment in cases of incompetency or misconduct, but it would seem that they are sometimes a necessary adjunct to the Court, for the section enacts that an Investigation thereunder before two Justices or a Stipendiary Magistrate shall be conducted, and the results thereof reported, in the same manner, and with the same powers in and with which Formal Investigations into wrecks and casualties are directed

(a) 39 & 40 Vict., c. 80, s. 29. See *ante*, page 62.

(b) See also post, page 137, where cases are referred to which arise out of a casualty, and which may yet form the subject of an Investigation under s. 241.

(c) 25 & 26 Vict., c. 63, s. 23, sub-sec. 6. See *ante*, page 60.

to be conducted, and the results thereof reported, under the provisions contained in the eighth part of the Merchant Shipping Act, 1854 (a). One of those powers (since repealed) (b), had relation to the appointment of Assessors, and such appointment was by the Merchant Shipping Act, 1876, section 30 (c), made compulsory in every Formal Investigation. And further, the existing provisions as to Assessors in Formal Investigations have been amended by the Shipping Casualties Investigations Act, 1879 (d). A fuller account of the above provisions has been given in an earlier chapter (e). General Rules have also been published under the powers of the two last-mentioned Acts regulating the procedure of Formal Investigations (f). Neither of the above-mentioned Acts contains any direct reference to the appointment of Assessors in Investigations under section 241 of the Merchant Shipping Act, 1854, conducted by two Justices or a Stipendiary Magistrate. The Formal Investigations to which these enactments and rules apply still take place under the authority of the eighth part of the Act of 1854, and are conducted thereunder; it is only that certain changes have been made in the procedure, and the assistance furnished to the Court. Assessors are not in strictness judicial members of the Court; their function is to advise, and questions relating to them properly belong to procedure. It is submitted, therefore, that the safest and most reasonable construction of the 241st section is, that the above enactments and rules as to procedure, including those relating to Assessors, apply to the Inquiries into the competency or conduct of certificated officers when they take place before two Justices or a Stipendiary Magistrate.

As to assessors being necessary.

Functions of assessors.

We have seen that the Courts of Inquiry created by section 241 of the Merchant Shipping Act, 1854, are of four classes, and the powers conferred upon them respectively by that section in relation to procedure are not identical.

The powers of the several tribunals are not identical.

(a) 17 & 18 Vict., c. 104, s. 241. See *ante*, page 130.
(b) *Ibid*, s. 434, repealed by 39 & 40 Vict., c. 80, s. 45.
(c) 39 & 40 Vict., c. 80, s. 30. See *ante*, page 62.
(d) 42 & 43 Vict., s. 72, s. 3. See *ante*, page 64.
(e) See *ante*, page 51.
(f) See *ante*, page 106.

First. As to Investigations conducted by persons appointed, or by a Local Marine Board.

As to the two classes of cases (A. and B.) in which the Board of Trade either institute an investigation and appoint persons to conduct it, or they direct the nearest Local Marine Board to institute it, with the assistance in either case of a local Stipendiary Magistrate or legal assistant. The persons so appointed, or the Local Marine Board, as the case may be, may summon the master, or mate, or engineer ([a]), to appear, and shall give him full opportunity of making a defence either in person or otherwise ([b]), and shall for that purpose have all the powers given by the First part of the Merchant Shipping Act, 1854, to inspectors appointed by the Board of Trade, and may make such order with respect to the costs of such Investigation as they may deem just ([c]), and shall on the conclusion of the Investigation make a report upon the case to the Board of Trade ([d]).

Powers of Inspectors.

The powers of inspectors thus conferred upon the Court of Investigation are set out at length at page 34.

Secondly, as to Investigation before two Justices or a Stipendiary Magistrate.

As to classes C. and D. Where there is no Local Marine Board before which the parties and witnesses can conveniently attend, or where such Local Marine Board is unwilling to institute the Investigation, and the Board of Trade accordingly direct the same to be instituted before two Justices or a Stipendiary Magistrate, the Investigation is to be conducted, and the results thereof reported in the same manner, and with the same powers in and with which Formal Investigations into wrecks and casualties are directed to be conducted, and the results thereof reported, under the provisions contained in the 8th Part of the Merchant Shipping Act, 1854 ([e]), save only that, if the Board of Trade so directs, the person bringing the charge of incompetency or misconduct to the notice of the

([a]) 25 & 26 Vict., c. 63, s. 11. See *ante*, page 131.

([b]) This enactment is similar in terms to the provision contained in sec. 30 of the Merchant Shipping Act, 1876. See *ante*, page 62.

([c]) See post, page 147.

([d]) 17 & 18 Vict., c. 104, s. 241, and see post, page 139.

([e]) 17 & 18 Vict., c. 104, s. 433, and following sections. See *ante*, page 57.

Board of Trade shall be deemed to be the party having the conduct of the case ([a]).

Result of above enactment.

By the above enactment the powers and procedure of the Court of Investigation when composed of two Justices or a Stipendiary Magistrate, are assimilated to those of a Court of Formal Investigation into a shipping casualty, conducted under the 8th Part of the Merchant Shipping Act, 1854, dealt with in the earlier part of this book. It must be remembered, however, as before explained, that the latter provisions have been successively amended, and a new system of procedure has been created by the Merchant Shipping Act Amendment Act, 1862, the Merchant Shipping Act, 1876, the Shipping Casualties Investigations Act, 1879, and by the General Rules issued under the authority of the two last-mentioned Acts, and that, as above-mentioned, all these are imported into and apply to the particular classes of Inquiries now under discussion. In practice Investigations by two Justices or a Stipendiary Magistrate are seldom or never resorted to.

Collisions Merchant Shipping Act, 1873, s. 16.

In addition to the incompetency or misconduct named in the 241st section as giving rise to an Investigation by a Court of Inquiry, the 16th section of the Merchant Shipping Act, 1873, above printed ([b]) includes as an additional ground for an Inquiry, the failure without reasonable cause of a master or certificated officer in charge of a vessel to render, after a collision with another vessel, the assistance therein mentioned, or to give the information he is thereby required to give to the master or person in charge of the other vessel. There is no specific mention in the section of an Inquiry under the 241st section or any other provision of the principal Act, and in this respect it differs from the repealed section 33 of the Merchant Shipping Act Amendment Act, 1862, which it replaced, where both Formal Investigations, and those the subject of this chapter, were expressly mentioned. It is conceived, however, that it may be held for the purpose of giving due effect to the enactment, that the "Inquiry" contemplated might, where requisite, be that provided by the 241st section.

([a]) 17 & 18 Vict., s. 241. See *ante*, page 130.
([b]) See *ante*, page 131.

For an example of an Inquiry under the repealed provision, the case of *ex parte Ferguson* may be referred to [a].

Cancellation or suspension of certificates.

The Court, however it may be constituted, may (being in this respect substituted by section 23 of the Merchant Shipping Act Amendment Act of 1862 for the Board of Trade) [b] suspend or cancel the certificate whether of competency or service of any master, mate, or engineer [c], if he is reported by the Court to be incompetent or to have been guilty of any gross act of misconduct, drunkenness, or tyranny [d].

Formalities necessary when the Court exercises the power of cancelling or suspending certificates.

The Court of Inquiry must at the conclusion of the case, or as soon afterwards as possible, state in open Court the decision to which they may have come with respect to cancelling or suspending certificates, and must in all cases send a full report upon the case, with the evidence, to the Board of Trade, and must also, if they determine to cancel or suspend any certificate, forward such certificate to the Board of Trade with their report [e].

The Board of Trade, if they think the justice of the case require it, may re-issue and return any certificate which has been cancelled or suspended, or shorten the time for which it is suspended, or grant a new certificate of the same or any lower grade in place of any certificate which has been cancelled or suspended [f].

No certificate can be cancelled or suspended unless a copy of the report or a statement of the case upon which the Inquiry has been ordered has been furnished to the owner of the certificate before the commencement of the Investigation, nor, in the case of Investigations conducted by Justices or a Stipendiary Magistrate, unless one Assessor at least expresses his concurrence in the report [g].

Certificate to be delivered up if cancelled or suspended.

Every master, mate, or engineer whose certificate is suspended or cancelled must, upon demand of the Court of Inquiry, deliver his certificate to them, or,

(a) *Ex parte* Ferguson, 6 Q.B., 280.
(b) 25 & 26 Vict., c. 63, s. 23, sub-sec. 1. See *ante*, page 60.
(c) *Ibid*, sub-sec. 2.
(d) 17 & 18 Vict., c. 104, s. 242, sub-sec. 1. See post, pages 140-143, for a fuller description of these offences.
(e) 25 & 26 Vict., c. 63, s. 23, sub-sec. 3. See *ante*, page 60.
(f) *Ibid*, sub-sec. 4.
(g) *Ibid*, sub-sec. 6.

if it is not demanded by the Court, must, upon demand, deliver it to the Board of Trade, or as it directs, and in default he incurs for each offence a penalty not exceeding fifty pounds ([a]). The Court of Inquiry are further empowered to make such order with respect to the costs of an Investigation as they may deem just ([b]). These words are almost identical with those of the 436th section of the Merchant Shipping Act, 1854, with respect to the costs of a Formal Investigation into a shipping casualty, but it is to be noted that while that Act proceeds to declare by what means the costs so ordered to be paid shall be recoverable, no provision is made in section 241 for the enforcement of the order of a Court of Inquiry. Such costs must therefore it is conceived be recovered by action in a Civil Court from the person ordered to pay them.

The Court may make an order as to costs.

No provision for enforcing orders for costs.

Grounds for Suspending or Cancelling Certificates.

The grounds upon which the certificates of masters, mates, and engineers are liable to suspension or cancellation by virtue of the above provisions are incompetency, or some gross act of misconduct, drunkenness, or tyranny ([c]), and are distinct from those which render officers liable to a similar punishment by Courts holding the Formal Investigations before treated of. In the latter class of cases the gist of the offence is, that the loss, or abandonment of, or serious damage to a ship, or loss of life, has been caused by the wrongful act or default of the officer ([d]). In the case of a casualty happening to a ship by the wilful neglect or default of her master but without being followed by serious damage to the ship itself, or loss of life, his certificate cannot be cancelled or suspended upon a Formal Investigation conducted under the 8th Part of the Merchant Shipping Act, 1854 ([e]). It is

Distinction between these and Formal Investigations.

([a]) 25 & 26 Vict., c. 63, s. 24, and 42 & 43 Vict., c. 72, s. 3, sub-sec. 4. See *ante*, pages 61 and 64.
([b]) 17 & 18 Vict., c. 104, s. 241. See *ante*, page 130.
([c]) *Ibid*, s. 242. See *ante*, page 138.
([d]) *Ibid*. See *ante*, page 57.
([e]) *Ex parte* Story, 3 Q.B.D. 166; 47 L.J. 266.

obvious that the conduct of the master may have been as blameworthy as if he had lost or seriously damaged his ship, or caused loss of life, and his competency or conduct may, in such a case, be properly investigated under section 241 of the Merchant Shipping Act, 1854, although it arose out of a casualty. It would be convenient if cases of this kind could be remitted under the powers of that section to two Justices or a Stipendiary Magistrate, but the conditions that there should be no Local Marine Board before which the parties and witnesses can conveniently attend, or that such Local Marine Board should be unwilling to institute the Investigation, must be first complied with.

Distinction maintained throughout the Merchant Shipping Acts.

The distinction between a wrongful act or default causing the loss or abandonment of, or serious, damage to a ship or loss of life, on the one hand; and incompetency, or a gross act of misconduct, drunkenness, or tyranny, on the other hand, is maintained throughout the provisions of the Merchant Shipping Acts which relate to the cancelling or suspension of a certificate ([a]). Sir T. H. Farrer, in his evidence before the Select Committee of 1860, referred to that distinction. "Under the Act of 1854," he stated, "Inquiries into wrecks are committed to Magistrates, and Inquiries into misconduct or drunkenness, not causing wrecks to the Local Marine Boards" ([b]).

Sir T. H. Farrer's evidence before Select Committee of 1860.

Incompetency. 1. Professional. 2. Mental. 3. Physical.

The incompetency which may be the subject of Investigation has been deemed to be not merely professional incompetency, but incompetency from mental ([c]) or even physical incapacity. It is obviously dangerous in the highest degree to permit a person to hold command of a ship, or to entrust the lives of others to his care, whose conduct or actions prove him to be mentally or physically "unfit to discharge his duties." It might, however, in the case of mental incapacity, seem at first sight to be difficult to secure to the officer "full opportunity of

([a]) See post, chapter on Investigations in British Possessions Abroad, page 149.

([b]) Report and Evidence of Select Committee of 1860, page 540.

([c]) Cases of the *Richard and William*, heard at Plymouth in 1878; the *Caduceus*, heard at Hull in 1879; and the *Fulmar*, heard at Dublin in 1883.

making a defence either in person or otherwise" as required by the section above quoted [a]; or to effect a valid service upon him of the copy report, or a statement of the case required by section 23 of the Merchant Shipping Act Amendment Act, 1862. But if a person be so insane as to be unable to defend himself, that is conclusive proof of his "unfitness," and no defence is really possible. He may, however, be insane with lucid intervals, and though "unfit to discharge his duties," may yet be capable of undertaking his defence. Again this may be done "either in person or otherwise," and these words would suffice to let in a friend, guardian, or some proper representative to conduct the defence.

Incompetency.

To avoid difficulty in reference to the service of the copy of the report or a statement of the case, it will be well to effect personal service upon the officer implicated in all cases where mental incapacity is the ground for the Inquiry, and in addition, to afford his friends or guardians every opportunity of making or joining in the defence.

Difficulty of defining incompetency.

The duties entrusted to a master are of a multifarious character, and it would be difficult to sum up all the various degrees of unfitness which may amount to incompetency. In general the test would be whether the officer possesses the ability and knowledge requisite for the due discharge of the duties usually discharged by persons holding the position for which his certificate purports to certify his fitness.

Misconduct.

The misconduct which renders a ship's officer liable to have his certificate suspended or cancelled, is, as we have seen, a "gross act of misconduct, drunkenness, or tyranny" [b]. These words probably do not import an offence against the ordinary criminal law, for if a ship's officer "is shown to have been convicted of any offence," the Board of Trade have the power, without further investigation, to suspend or cancel his certificate, a power which is preserved to them by the exception in section 23 of 25 & 26 Vict., c. 63 [c]. This view of the construction of the word

[a] 17 & 18 Vict., c. 104, s. 241.
[b] See *ante*, page 139.
[c] See *ante*, page 60, note [a], and post, page 168, note [b].

"misconduct," is in conformity with that explained by Sir T. H. Farrer in giving evidence on the subject. He said, "I think that although the word in the Merchant Shipping Act is large, namely, 'misconduct,' it was never intended that cases of that kind, which the ordinary law tribunals of the country are competent to deal with should be referred to a special tribunal" ([a]).

The circumstances in which acts of gross misconduct may be committed, necessarily differ very widely, and no useful purpose would be served by an attempt to tabulate such offences. In each case the facts must be carefully ascertained as they bear upon the conduct under investigation, and the judgment of the Court be formed upon them.

The remaining kind of offence which may be a ground for the cancellation or suspension of a certificate, is that named in the Merchant Shipping Act of 1873 ([b]). After a collision between his own vessel and another, the master or person in charge, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any), is bound to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and the passengers (if any), such assistance as may be practicable, and as may be necessary in order to save them from any danger caused by the collision, and also to give to the master or person in charge of the other vessel the name of his own vessel and of her port of registry, or of the port or place to which she belongs, and also the names of the ports and places from and to which she is bound. Upon the failure of the master or officer in charge, without reasonable cause to render the above assistance, or give the above information, his certificate may be cancelled or suspended. The section does not need much comment. The reasonable cause would of course include danger to the officer's own vessel, crew, and passengers, and the practical impossibility or improbability of being able to render assistance. Whether an officer is "in charge" or not, must in each case

([a]) See Report and Evidence of Select Committee of 1860, page 541.

([b]) 36 & 37 Vict., c. 85, s. 16. See *ante*, page 131.

be a question of fact; the case of *ex parte Ferguson* [a], may, however, be usefully consulted as to the meaning of this expression, as well as of the word "collision."

PROCEDURE.

Procedure.

There is no special procedure provided by the Merchant Shipping Acts, and the Court would therefore have full power to regulate it, subject however, to the requirements that the person accused must have a full opportunity of making a defence, either in person or otherwise [b]; that he must have been served with a copy of the report or a statement of the case upon which the Investigation has been ordered; and that the decision with respect to cancelling or suspending certificates must be given at the conclusion of the case, or as soon afterwards as possible, in open Court [c].

The course of procedure, in other respects, depends upon the constitution of the tribunal. That prescribed in the case of an Investigation either by persons appointed by the Board of Trade, or by a Local Marine Board, with a Stipendiary Magistrate or legal assistant, differs from the procedure in the case of an Investigation conducted before two Justices or a Stipendiary Magistrate. In regard to Investigations before persons appointed by the Board of Trade or before Local Marine Boards, the Board of Trade deem it desirable that a clear distinction should be drawn between, on the one hand, the judicial functions exercised conjointly by such persons, or the Local Marine Board, and the Stipendiary Magistrate or legal assistant; and on the other hand, the functions of the practitioner who represents the Board of Trade. On the preferment of a charge against a certificated officer, the Board of Trade will, if they have "reason to believe" that the said officer "is from incompetency or misconduct unfit to discharge his duties," and it is decided to hold an Investigation into his conduct before a

Preliminary.

(a) *Ex parte* Ferguson, 6 Q.B. 280.
(b) 17 & 18 Vict., c. 104, s. 241. See *ante*, page 130.
(c) See *ante*, page 138.

Local Marine Board, direct the Local Marine Board most conveniently situated for the hearing of the case to institute the same, and will at the same time, at ports where there are no Stipendiary Magistrates, appoint a legal assistant to the Local Marine Board. The Board of Trade also request their Solicitor to instruct his agent (or Counsel) to represent them. On receipt of these instructions it is the duty of the local Solicitor who represents the Board of Trade;

(1) To arrange in consultation with the Superintendent of the Mercantile Marine at the port, and the Secretary of the Local Marine Board; or as the case may be, the persons appointed to conduct the Investigation, and the Stipendiary Magistrate or legal assistant; the time and place of hearing.

Summons to accused.

(2) To prepare a summons [a] in duplicate and the "copy of the report or statement of the case" required by section 23, sub-sec. 6, of "The Merchant Shipping Act Amendment Act, 1862," [b] and cause them to be served on the master, mate, or engineer whose competency or conduct is in question [c].

Summons to witnesses.

(3) To prepare summonses, [d] and cause them to be served on such witnesses as it may be considered necessary to call in order to elucidate the facts of the case.

(4) To take, or cause to be taken, the statements of the various witnesses who are to be examined at the Investigation, or, if already taken, to supplement them, if necessary, by additional proofs; and to take such other steps as may be necessary in order to prepare the case for hearing at the earliest possible moment. In the preparation of the case the Solicitor does not merely get up the case as quasi-prosecutor, but endeavours to elicit and lay before the Court the entire facts as they

[a] See Form of Summons in Appendix, p. 582.
[b] See *ante*, page 60.
[c] The summons should state distinctly the nature of the charge to be brought against the defendant.
[d] See Form of Summons in Appendix, page 581.

bear both for and against the certificated officer.

(5) To give due notice to the Secretary of the Local Marine Board when the case is ripe for hearing [a].

Duties of Secretary.

When a Local Marine Board has been directed to institute an Investigation into the incompetency or misconduct of a certificated master, mate, or engineer, the Board of Trade regard the following as duties to be performed by the Secretary of the Local Marine Board, viz.:—

1. To give due notice of the time and place fixed for the Investigation to the Solicitor or Counsel who represents the Board of Trade.

2. To attend the Investigation and to take notes of the evidence. If the Secretary, being a Solicitor, be appointed legal assistant to the Local Marine Board for the Investigation, the duty of taking notes is to be performed by some other person, who should, if possible, be a salaried officer of the Local Marine Board. If there be no such officer whose services are available for this duty, a person may be specially employed by the Local Marine Board to perform it.

Service of summons.

Where the defendant resides at another port or place than that appointed for the hearing, the summons is, unless special directions are given to the contrary, served by an officer at or near the port or place of residence of the defendant, and he returns the duplicate summons with an affidavit of service to the Solicitor representing the Board of Trade [b].

Proceedings in Court.

On the assembling of the Court, who have, as has been seen [c], all the powers given by the First Part of the Merchant Shipping Act, 1854 (section 15), to Inspectors appointed by the Board of Trade, the local Solicitor, who appears for the Board, takes care that service of notice upon the person charged is

(a) See Board of Trade Circular, No. 11,890, Appendix, page 356.
(b) See page 108 as to mode of service.
(c) See *ante*, page 130.

formally admitted or proved. If the person charged has failed to attend after the statutory notice has been duly served upon him, the Court may proceed to hear and adjudicate upon the case in his absence.

Opening statement.

The Solicitor then opens the case by stating the facts as gathered from the statements of the witnesses, taking care that in doing so the person charged is, if present, made fully aware of the nature of the charges he will have to answer. If he does not appear to the summons, knowing the time and place of the Inquiry, and that a charge is to be made against him, he cannot complain that he has not had full opportunity of making a defence.

Examination of witnesses.

The Solicitor then calls and examines on oath administered by the Court ([a]) the several witnesses who speak to the charges and the conduct of the defendant([b]).

Defence.

After cross-examination of the prosecutor's witnesses by the person charged or his Solicitor (the defendant having liberty to make his defence either in person or otherwise) ([c]) and after the witnesses have been re-examined by the Solicitor who appears for the Board of Trade, and examined by the Court, the person charged calls his own witnesses ([d]), who may be

([a]) Wilful and corrupt false swearing before a Local Marine Board lawfully constituted upon a matter material to an Inquiry then being lawfully investigated by them in pursuance of the statute, is perjury, and indictable as such. Such a tribunal is invested with judicial powers and enabled to inquire on oath, and pass a sentence affecting the status of the person accused, who is entitled to have protection against witnesses who come to swear falsely. *Reg.* v. *Tomlinson*, L.R. 1 C.C. 49.

([b]) The principles of evidence enumerated by Lord Loughborough in reference to Courts Martial in *Grant* v. *Gould*, 2 H. Bl. 69, will apply to Local Marine Board Investigations. "The principles of the law of England must be their guide, but they are not bound to adopt all the refined distinctions that have been established and adopted in Courts of Common Law." Thring's "Criminal Law of the Navy," 2nd Ed., page 320.

([c]) 17 & 18 Vict., c. 104, s. 241. This means that he may do so either in person or by his legal adviser, and those who conduct such an Inquiry should give the party charged every opportunity of having his attorney and counsel, and witnesses present. Per Mr. Justice Crampton, *Reg.* v. *Collingridge*, 34 L.J. Q.B. 9.

([d]) The Local Marine Board has the same power of summoning witnesses as an Inspector has under section 15, Merchant Shipping Act, 1854. The statute gives a discretion to bodies such as a "Local Marine Board," where all the expense of the witnesses is to be thrown upon the public, and they should prevent a witness being vexatiously summoned by a party. It is a proper cause for such a Court before granting the summonses for the

examined, cross-examined and re-examined in a similar manner. The Solicitor who represents the Board of Trade can then if necessary, with the permission of the Court, call further witnesses. If the defendant has not already given evidence, he is next allowed an opportunity of offering any explanation he may wish to make, and his explanatory statement may either be verbal, or in writing. The Solicitor who appears for the defendant, whether or not the defendant has been examined, or has made any explanatory statement, is allowed to address the Court on his client's behalf, and the Solicitor who represents the Board of Trade has a right to sum up the evidence and reply upon the whole case. When all the evidence has been taken, and the respective Solicitors have delivered their addresses, the Court at the conclusion of the case, or as soon afterwards as possible, states in open Court the decision to which they may have come with respect to cancelling or suspending the defendant's certificate ([a]).

Reply.

Decision of Court.

Should the Court decide to cancel or suspend the defendant's certificate, they demand its delivery to them ([b]).

Delivery of certificate.

The Court may also make such order with respect to the costs ([c]) of the Investigation as they may deem just ([d]). The proceedings then terminate, and the Court afterwards sends a full report upon the case, with the evidence, to the Board of Trade, and they also, if they determine to cancel or suspend any certificate, forward such certificate to the Board of Trade with their report ([e]). As soon as the proceedings have terminated, the local Solicitor notifies the fact to the Superintendent of Mercantile Marine at the port, in order that he may pay off and discharge the witnesses.

Order as to costs.

defence, to inquire who the witnesses are, and what they are expected to prove; and to refuse the summons in respect of any witness who can only speak to matter clearly irrelevant. *Reg.* v. *Collingridge*, 34 L.J. Q.B. 9.

([a]) 25 & 26 Vict., c. 63, s. 23, sub-sec. 3, see *ante*, page 60.

([b]) 25 & 26 Vict., c. 63, s. 24, as amended by 42 & 43 Vict., c. 72, s. 3, sub-sec. 4, see *ante*, pages 61 and 65.

([c]) See *ante*, page 139, as to recovery of such costs.

([d]) 17 & 18 Vict., c. 104, s. 241, see *ante*, page 130. This power is seldom exercised owing to the absence of any summary means of recovery. See *ante*, page 139.

([e]) 25 & 26 Vict., c. 63 s. 23, sub-sec. 3, see *ante*, page 60.

The Board of Trade, if they think the justice of the case require it, may re-issue and return any certificate which has been cancelled or suspended, or shorten the time for which it is suspended, or grant a new certificate of the same or any lower grade in place of any certificate which has been cancelled or suspended ([a]).

Certiorari or Mandamus will lie in certain cases.

The Court of Queen's Bench has asserted its authority to grant a Certiorari in cases where a Local Marine Board has exceeded its jurisdiction, and to grant a Mandamus to hear a case where no proper hearing has taken place ([b]).

Procedure in Investigations before Magistrates.

With respect to Investigations of the third and fourth classes before-mentioned, before two Justices or a Stipendiary Magistrate, conducted under the latter portion of section 241 of the Merchant Shipping Act, 1854, a procedure rarely if ever resorted to ([c]), that section provides that it shall be conducted, and the results thereof reported, in the same manner and with the same powers in and with which Formal Investigations into wrecks and casualties are directed to be conducted under the provisions contained in the Eighth Part of the Act ([d]). The effect of this provision has already been discussed, and in the Chapter ([e]) on the procedure at Formal Investigations the practice in such cases is fully dealt with.

([a]) See *ante*, page 60.
([b]) *Reg.* v. *Collingridge*, 34 L.J. Q.B. 9.
([c]) See *ante*, page 137.
([d]) 17 & 18 Vict., c. 104, s. 241.
([e]) See Chapter V., page 102.

CHAPTER VIII.

INVESTIGATIONS IN BRITISH POSSESSIONS ABROAD

Investigations in Colonies depend partly upon Imperial legislation and partly upon Colonial Acts or Ordinances.

The power of holding in British Colonies Investigations into shipping casualties, and into the conduct of certificated officers of ships, depends, so far as the subject of this chapter is concerned, in part upon Imperial legislation, and in part upon Colonial Acts or Ordinances in force in the particular Colony in which the Investigation is held. With any purely Colonial enactments relating to such Investigations it is not proposed to deal; they are necessarily very numerous, of a varied character, and possess an interest chiefly confined to the particular Colony wherein they have been enacted ([a]).

The Legislative power in a Colony depends upon its Constitution.

The power possessed by Colonial legislative authorities, using the term in its widest sense, with respect to legislation, depends in every case upon the constitution of the Colony. A discussion of these powers, the sources whence they are derived, and the methods by which they are conferred, would be out of place in this work. As a general rule it may be stated that, unlike the Imperial Legislature in this respect, the Colonial authorities have limited powers of legislation, confined in general to their own territorial limits, and only over persons and property therein.

Limited to territorial limits of Colony, and persons and property therein

The Imperial legislation relating to the subject under discussion is the following:—

Imperial legislation. 17 & 18 Vict., c. 104, s. 242. Suspension or cancellation of certificates.

"The Board of Trade ([b]) may suspend or cancel the certificate (whether of competency or service) of any master or mate * * * * if upon any Investigation made by any Court or tribunal authorised or hereafter to be authorised by the legislative authority in

([a]) In the Appendix page 411 *et seq.* are printed the Acts and Ordinances of the Colonies relating to Shipping Investigations.

([b]) The Court or Tribunal by which the case is investigated or tried has been substituted for the Board of Trade by 25 & 26 Vict., c. 63. See post, page 151.

17 & 18 Vict., c. 104, s. 242.

any British possession to make inquiry into charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such Court or tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of, or serious damage to any ship, or loss of life has been caused by his wrongful act or default * * * *(a). And every master or mate whose certificate is cancelled or suspended shall deliver it to the Board of Trade, or as it directs, and in default shall for each offence incur a penalty not exceeding fifty pounds; and the Board of Trade may at any subsequent time grant to any person whose certificate has been cancelled a new certificate of the same or of any lower grade."

Sec. 288. Provisions of Act, as applied by * * Colonial Governments to their own ships, may be enforced throughout the Empire.

"If * * * * the respective legislative authorities in any *British* possession abroad, by any Acts, Ordinances, or other appropriate legal means, apply or adapt any of the provisions in the third part (b) of this Act contained to any *British* ships registered at, trading with, or being at any place within their respective jurisdictions, and to the owners, masters, mates, and crews thereof, such provisions, when so applied and adapted as aforesaid, and as long as they remain in force, shall in respect of the ships and persons to which the same are applied be enforced, and penalties and punishments for the breach thereof shall be recovered and inflicted, throughout Her Majesty's dominions, in the same manner as if such provisions had been hereby so adapted and applied, and such penalties and punishments had been hereby expressly imposed."

Sec. 289. East Indian and Colonial Acts to be subject to disallowance, and require sanction as in other cases.

"Every Act, Ordinance, or other form of law to be passed or promulgated by the Governor General of *India* in Council, or by any other legislative authority, in pursuance of this Act, shall respectively be subject to the same right of disallowance or repeal, and require the same sanction or other acts and formalities, and be subject to the same conditions in all

(a) The words here left out, requiring the confirmation of the Report by the Governor of the British Possession, were repealed as from the date of the passing of the Merchant Shipping Act Amendment Act, 1862, by 45 & 46 Vict., c. 76, s. 7.

(b) This part relates to masters and seamen, their discipline and conduct.

respects, as exist and are required in order to the validity of any other Act, Ordinance, or other form of law passed by such Governor General in Council or other legislative authority respectively."

17 & 18 Vict., c. 104.

"If in any matter relating to any ship or to any person belonging to any ship there appears to be a conflict of laws, then, if there is in the third part of this Act, any provision on the subject which is hereby expressly made to extend to such ship, the case shall be governed by such provision, and if there is no such provision the case shall be governed by the law of the place in which such ship is registered."

Sec. 290. Conflict of Laws.

"The legislative authority of any *British* possession shall have power, by any Act or Ordinance, confirmed by Her Majesty in Council, to repeal, wholly or in part, any provisions of this Act, relating to ships registered in such possession; but no such Act or Ordinance shall take effect until such approval has been proclaimed in such possession, or until such time thereafter as may be fixed by such Act or Ordinance for the purpose."

Sec. 547. Power of Colonial Legislatures to alter provisions of Act.

"The following rules shall be observed with respect to the cancellation and suspension of certificates, that is to say:—

25 & 26 Vict., c. 63, sec. 23.

"(1.) The power of cancelling or suspending the certificate of a master or mate by the 242nd section of the principal Act conferred on the Board of Trade shall * * * * vest in and be exercised by the * * * * Court or Tribunal by which the case is investigated or tried, and shall not in future vest in or be exercised by the Board of Trade:

Power of cancelling certificate to rest with the Court which hears the case.

"(2.) Such power shall extend to cancelling or suspending the certificates of engineers in the same manner as if 'certificated engineer' or 'certificated engineers' were inserted throughout such section after 'master' or 'masters:'

"(3.) Every such Court or Tribunal shall, at the conclusion of the case, or as soon afterwards as possible, state in open Court the decision to which they may have come with respect to cancelling or suspending certificates, and shall in all cases send a full report upon the case, with the evidence, to the Board of Trade, and shall also, if they determine to cancel or suspend any certificate, forward such certificate to the Board of Trade with their report:

25 & 26 Vict., c. 63, sec. 23.

"(4.) It shall be lawful for the Board of Trade, if they think the justice of the case require it, to re-issue and return any certificate which been cancelled or suspended, or shorten the time for which it is suspended, or grant a new certificate of the same or any lower grade in place of any certificate which has been cancelled or suspended:

* * * * *

"(6.) No certificate shall be cancelled or suspended under this section unless a copy of the report or a statement of the case upon which the Investigation is ordered has been furnished to the owner of the certificate before the commencement of the Investigation, * * * *."

Sec. 24. Certificate to be delivered up.

"Every master or mate or engineer whose certificate is * * * * suspended or cancelled in pursuance of this Act shall, upon demand of the Court or tribunal by which the case is investigated or tried, deliver his certificate to them, or, if it is not demanded by such * * * * Court, or tribunal, shall, upon demand, deliver it to the Board of Trade, or as it directs, and in default shall for each offence incur a penalty not exceeding Fifty Pounds."

32 Vict., c. 11, sec. 8. Colonial certificates to master, mates, and engineers.

"Where the Legislature of any British possession provides for the examination of, and grant of certificates of competency to persons intending to act as masters, mates, or engineers on board British ships, and the Board of Trade reports to Her Majesty that they are satisfied that the examinations are so conducted as to be equally efficient as the examinations for the same purpose in the United Kingdom under the Acts relating to Merchant Shipping, and that the certificates are granted on such principles as to show the like qualifications and competency as those granted under the said Acts, and are liable to be forfeited for the like reasons and in the like manner, it shall be lawful for Her Majesty, by Order in Council,

"I. To declare that the said certificates shall be of the same force as if they had been granted under the said Acts:

"II. To declare that all or any of the provisions of the said Acts which relate to certificates of competency granted under those Acts shall

apply to the certificates referred to in the said order: 32 Vict., c. 11, sec. 3.

"III. To impose such conditions and to make such regulations with respect to the said certificates, and to the use, issue, delivery, cancellation, and suspension thereof, as to Her Majesty may seem fit, and to impose penalties not exceeding fifty pounds for the breach of such conditions and regulations.

"Upon the publication in the London Gazette of any such Order in Council as last aforesaid, the provisions therein contained shall, from a date to be mentioned for the purpose in such order, take effect as if they had been contained in this Act (a.)

"It shall be lawful for Her Majesty in Council to revoke any order made under this section."

Jurisdiction of Colonial Courts as to casualties occurring outside the Colony.

In the year 1881, an Investigation was held in Australia, in which the question was mooted whether a Colonial Court, authorised by the Colonial Legislature under the provisions above set forth, to investigate the causes of shipping casualties, had jurisdiction over such as arose outside the Colony. In that case a casualty had occurred to a British ship off the coast of Australia, and thereafter the ship and her crew arrived in one of the Australian Colonies. An Investigation was instituted before the local tribunal which proceeded to inquire into the casualty. The Colonial Court of Queen's Bench, however, upon being applied to, held that as it had not occurred within the limits of the Colony, the tribunal could not take cognisance of the matter and the Investigation was thereupon stayed. The Law Officers of the Crown in England concurred in the decision of the Australian Court, and an Act of Parliament was passed conferring jurisdiction upon local tribunals to make inquiry in certain cases arising beyond the limits of the Colony. This Act is the Merchant Shipping (Colonial Inquiries) Act, 1882, and so far as it is necessary to set it out here, the Statute is as follows:—

Decision of the Colonial Court of Queen's Bench.

Increased powers conferred upon Colonial Courts by the Merchant Shipping (Colonial Inquiries) Act, 1882.

45 & 46 Vict., c 76, sec. 3.

"Every Court or tribunal which is already autho-

(a) A list of the Colonies which have complied with the above statute is printed in the Appendix, page 394.

45 & 46 Vict., c. 76, sec. 3.

Colonial tribunals to have jurisdiction to make inquiry into charges of misconduct or incompetency and shipping casualties in certain cases occurring outside the limits of the Colony.

rised or which may hereafter be authorised by the legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters, mates, or engineers of ships, or as to shipwrecks or other casualties affecting ships, shall in the cases following; that is to say,

"I. When the incompetency or misconduct has occurred on board of a British ship on or near the coasts of the British possession or on board of a British ship in the course of a voyage to a port within the British possession:

"II. When the incompetency or misconduct has occurred in any part of the world on board a British ship registered in the British possession:

"III. When the shipwreck or casualty occurs to a British ship on or near the coasts of the British possession or to a British ship in the course of a voyage to a port within the British possession:

"IV. When the shipwreck or casualty occurs in any part of the world to a British ship registered in the British possession:

"V. When the master, mate, or engineer of a British ship who is charged with incompetency or misconduct on board of such British ship is found in the British possession:

"VI. When some of the crew of a British ship which has been wrecked or to which a casualty has occurred, and who are competent witnesses to the facts, are found in the British possession,

wherever the incompetency, misconduct, shipwreck, or casualty has occurred, have the same jurisdiction as such Court or tribunal would have had if such incompetency, misconduct, shipwreck, or casualty had occurred within the ordinary jurisdiction of such Court or tribunal, but subject to all provisions, restrictions, and conditions which would have been applicable if they had so occurred: Provided that no inquiry shall be held under this Act into any ship-

wreck, or other casualty, or charge of incompetency or misconduct, which has once been the subject of such an Inquiry and has been reported on by any competent Court or tribunal in any part of Her Majesty's dominions, or in respect of which the certificate of a master, mate, or engineer has been suspended or cancelled by a Naval Court; and provided also, that where any Inquiry has been commenced in the United Kingdom no Inquiry shall be made in the same case under the authority of this Act in any British possession.

45 & 46 Vict., c. 76, sec. 3.

"In all the above cases the 'British possession' shall mean the British possession by the legislative authority whereof the Court or tribunal is authorised to make inquiry."

Sec. 4. Colonial legislative authorities empowered to authorise inquiries into shipping casualties and charges of misconduct and incompetency in certain cases.

"The legislative authority in any British possession is hereby empowered to authorise Courts or tribunals to make inquiries in the cases enumerated in the last preceding section of this Act into charges of incompetency or misconduct on the part of masters, mates, or engineers of ships, or as to shipwrecks or other casualties affecting ships, subject to the provisions in the last preceding section of this Act mentioned."

Sec. 5. Suspension or cancellation of certificates.

"The powers of suspending or cancelling the certificate of any master, mate, or engineer of a ship, conferred by the provisions of the Merchant Shipping Acts, 1854 to 1880, upon or after any Inquiry or investigation held under the provisions of the said Acts, shall be applicable to and be exercised upon or after any Inquiry by any Court or tribunal authorised by this Act, or authorised by the legislative authority of any British possession under the powers conferred by this Act. Such power of suspension or cancellation shall be exercised by the Court or tribunal holding the Inquiry in the manner provided by section 23 of the Merchant Shipping Act Amendment Act, 1862, and the Board of Trade shall in such cases have all the powers conferred upon them by the said section."

Tribunal not strictly defined by the Imperial Acts.

It must be authorized by Colonial Legislature.

No precise definition is laid down by the above Statutes, of the Court or tribunal of Investigation. It must be authorized by the legislative authority in a British possession to make inquiry into charges of incompetency or misconduct of ships' officers, or

Its jurisdiction.

as to shipwrecks or other casualties affecting ships, and the jurisdiction and powers of such Court or tribunal, except as to the cancellation and suspension of certificates which are provided for by the above Imperial enactments, depend entirely upon the Colonial Acts or Ordinances.

Want of uniformity in different Colonial systems of Inquiry.

Having regard to the great number of our Colonial possessions, to the Imperial Acts of Parliament which relate to them, and to their different systems of Legislature, it may be conceived that there is a great want of uniformity in the provisions which the Colonies have respectively made for inquiring into shipping casualties, and into the conduct of ships' officers. Our home legislation on the subject is unfortunately of so intermixed and fragmentary a character, appearing here and there in numerous Acts of Parliament, that it has hitherto presented no satisfactory model for imitation by Colonial Legislatures. It may be hoped that this drawback to the formation of a compact system of Inquiries may in course of time be removed, and in the meantime attention is being devoted to the subject in certain of the larger Dependencies, such as India. By means of communications between the Indian, and Home Governments suggestions for amendment in the proposed enactments of the former Government are made and carried into effect. A certain character and authority are thus conferred upon the Indian enactments, and so far as they are suitable to the requirements of other British possessions they may provide a system which may be conveniently adopted by the Colonial Legislatures. In the present condition of legislation throughout the British dominions, each Colony having its own peculiar system and working out that system in its details according to the special peculiarities of the judicial and executive administration of the country, a complete discussion thereof would be practically an examination in detail of the several Colonial enactments. Instead, therefore, of entering upon so large an inquiry the Acts and Ordinances of the different Colonies are printed in the Appendix (a).

Colonial Acts, &c., are set out in the Appendix.

Certificates to which the Imperial enactments relate.

The certificates to which the Imperial enactments relate, are such as are granted under the Merchant

(a) See Appendix, page 411.

Shipping Act, 1854, as extended by the Merchant Shipping Act Amendment Act, 1862, or under the Merchant Shipping (Colonial) Act, 1869 [a].

Grounds on which a Colonial Court can suspend or cancel a certificate.

The grounds upon which a Colonial Court or tribunal is empowered to suspend or cancel a certificate are :—

(*a*) That a certificated officer has been guilty of a gross act of misconduct, drunkenness, or tyranny [b].

(*b*) That the loss or abandonment of, or serious damage to a ship, or loss of life, has been caused by the wrongful act or default of a certificated officer [c].

The other grounds for dealing with the certificates are the same as those for which the tribunals already noticed have power to cancel or suspend them [d]; and it is therefore unnecessary to enter into any examination of such grounds in the present chapter.

Procedure of the Colonial Courts.

The procedure of the Colonial Courts or tribunals is entirely subject to, and controlled by, the Colonial enactments, save as to those express provisions which are contained in the 23rd section [e] of the Merchant Shipping Act Amendment Act, 1862. These must be carefully followed in order to render valid any suspension or cancellation of an officer's certificate.

(a) See as to these certificates, Appendix, page 390.
(b) 17 & 18 Vict., c. 104, s. 242, sub-sec. 5, see *ante*, page 149.
(c) *Ibid*, page 150.
(d) See *ante*, pages 88 and 139.
(e) See *ante*, page 151.

CHAPTER IX.

INVESTIGATIONS BY NAVAL COURTS IN FOREIGN COUNTRIES.

We have seen that under Part VIII. of the Merchant Shipping Act, 1854, as amended by subsequent legislation, provision has been made for the investigation of shipping casualties happening on or near the British coast, or the witnesses to which arrive in the United Kingdom, and further that Colonial tribunals exercise jurisdiction in cases arising within, and in some instances beyond, the limits of the Colony itself. It may frequently happen that a loss occurs near the coasts of a foreign country, or the witnesses are to be found in that country, and provision is accordingly made for having such cases investigated by Naval Courts.

Provision for Inquiry abroad in certain cases.

The statutory provisions relating to Naval Courts are the following:—

Statutory provisions.

17 & 18 Vict., c. 104, sec. 260.

Naval Courts may be summoned for hearing complaints, and investigating wrecks on the high seas or abroad.

"Any officer in command of any ship of Her Majesty on any foreign station, or, in the absence of such officer, any consular officer, may summon a court, to be termed a 'Naval Court,' in the following cases; (that is to say),

"(1.) Whenever a complaint which appears to such officer to require immediate investigation is made to him by the master of any *British* ship, or by any certificated mate, or by one or more of the seamen belonging to any such ship [a]:

"(2.) Whenever the interest of the owner of any *British* ship or of the cargo of any such ship appears to such officer to require it:

"(3.) Whenever any *British* ship is wrecked or abandoned or otherwise lost at or near the place where such officer may be, or whenever the crew or part of the crew of any British ship which has been wrecked, abandoned, or lost abroad arrives at such place."

Sec. 261. Constitution of such Courts.

"Every such Naval Court as aforesaid shall consist of not more than five and not less than three members, of whom, if possible, one shall be an officer in

[a] The master is required to send any seaman or apprentice ashore, to enable him to make such complaint, 17 & 18 Vict., c. 104, sec. 232.

the naval service of Her Majesty not below the rank of lieutenant, one a consular officer, and one a master of a British merchant ship, and the rest shall be either officers in the naval service of Her Majesty, masters of British merchant ships, or British merchants; and such Court may include the naval or consular officer summoning the same, but shall not include the master or consignee of the ship to which the parties complaining or complained against may belong; and the naval or consular officer in such Court, if there is only one such officer in the Court, or, if there is more than one, the naval or consular officer who, according to any regulations for settling their respective ranks for the time being in force, is of the highest rank, shall be the president of such Court."

17 & 18 Vict., c. 104, sec. 261.

"Every such Naval Court shall hear and investigate the complaint brought before it, or the cause of the wreck or abandonment, (as the case may be), and may for that purpose summon and compel the attendance of parties and witnesses, and administer oaths, and order the production of documents, and shall conduct the Investigation in such manner as to give any person against whom any charge is made an opportunity of making a defence."

Sec. 262. General functions and mode of action of such Courts.

"Every such Naval Court may, after hearing the case, exercise the following powers; (that is to say),

Sec. 263. Powers of such Courts:

"(1). It may, if unanimous that the safety of the ship or crew, or the interest of the owner, absolutely requires it, supersede the master, and may appoint another person to act in his stead; but no such appointment shall be made without the consent of the consignee of the ship, if then at the place:

To supersede the master:

"(2). It may discharge any seaman (a) from his ship:

To discharge a seaman:

"(3). It may order the wages of any seaman so discharged or any part of such wages to be forfeited, and may direct the same either to be retained by way of compensation to the owner, or to be paid into the receipt of Her Majesty's Exchequer in the same manner as other penalties and forfeitures under this Act:

To forfeit wages.

17 & 18 Vict., c. 104, sec. 263.

(a) "Seaman" includes every person (except masters, pilots, and apprentices) employed or engaged in any capacity on board any ship, 17 & 18 Vict., c. 104, s. 2.

To decide disputes as to wages, &c.:

"(4). It may decide any questions as to wages, or fines, or forfeitures, arising between any of the parties to the proceedings:

To direct costs of imprisonment to be paid out of wages.

"(5). It may direct that all or any of the costs incurred by the master or owner of any ship in procuring the imprisonment of any seaman or apprentice in a foreign port, or in his maintenance while so imprisoned, shall be paid out of and deducted from the wages of such seaman or apprentice, whether then or subsequently earned:

To send home offenders for trial.

"(6). It may exercise the same powers with regard to persons charged before it with the commission of offences at sea or abroad as are by this Act given to British consular officers:

To order payment of costs, &c.

"(7). It may order the costs of the proceeding before it (if any), or any portion thereof, to be paid by any of the parties thereto, and may order any person making a frivolous or vexatious complaint to pay compensation for any loss or delay caused thereby; and any cost or compensation so ordered shall be paid by such person accordingly, and may be recovered in the same manner in which the wages of seamen are recoverable, or may, if the case admits, be deducted from his wages:

"And all orders duly made by any such Court under the powers hereby given to it shall in any subsequent legal proceedings be deemed conclusive as to the rights of the parties."

Sec. 264. Orders to be entered in official log.

"All orders made by any such Naval Court shall, whenever practicable, be entered in the official log-book of the ship to which the parties to the proceedings before it belong, and shall be signed by the President of the Court."

Sec. 265. Report to be made of proceedings of Naval Courts.

"Every such Naval Court shall make a report ([a]) to the Board of Trade, containing the following particulars; (that is to say),

"(1). A statement of the proceedings, with the order made by the Court, and a report of the evidence:

"(2). An account of the wages of any seaman or apprentice who is discharged from his ship by such Court:

([a]) See post, pages 171 and 176, and Appendix, pages 582 and 585, note ([b]).

"(3). If summoned in order to inquire into a case of wreck or abandonment, a statement of the opinion of the Court as to the cause of such wreck or abandonment, with such remarks on the conduct of the master and crew as the circumstances require:

17 & 18 Vict., c. 104, sec. 265.

"And every such report shall be signed by the President of the Court, and every document purporting to be such a report and to be so signed as aforesaid shall, if produced out of the custody of some officer of the Board of Trade, be deemed to be such report, unless the contrary is proved, and shall be received in evidence, subject to all just exceptions."

Sec. 266. Penalty for preventing complaint or obstructing Investigation.

"Any person who wilfully and without due cause prevents or obstructs the making of any such complaint as last aforesaid, or the conduct of any case or investigation by any Naval Court, shall for each such offence incur a penalty not exceeding fifty pounds, or be liable to imprisonment with or without hard labour for any period not exceeding twelve weeks" (a).

Sec. 242. Board of Trade may cancel or suspend certificates in certain cases.

"The Board of Trade (b) may suspend or cancel the certificate (whether of competency or service) of any master or mate * * * * if upon any Investigation made by a Naval Court constituted as hereinafter mentioned, it is reported that the loss or abandonment of, or serious damage to, any ship, or loss of life has been caused by his wrongful act or default: (or) if he is superseded by the order * * * * of any Naval Court constituted as hereinafter mentioned; * * * * and every master or mate whose certificate is cancelled or suspended shall deliver it to the Board of Trade or as it directs, and in default shall for each offence incur a penalty not exceeding fifty pounds; and the Board of Trade may at any subsequent time grant to any person whose certificate has been cancelled a new certificate of the same or of any lower grade."

18 & 19 Vict., c. 91, s. 18.

"Any Naval Court summoned, under the provisions of the Merchant Shipping Act, 1854, to hear

(a) As to the mode of recovering penalties in all places within Her Majesty's dominions, except Scotland, see section 518 Merchant Shipping Act, 1854; and in Scotland, *ibid* ss. 531 and 543.

(b) The Court or tribunal by which the case is investigated or tried has been substituted for the Board of Trade by 25 & 26 Vict. c. 63, s. 23. See post, page 162.

18 & 19 Vict., c. 91, s. 18. Additional powers of Naval Courts.

any complaint touching the conduct of the master or any of the crew of any ship, shall, in addition to the powers given to it by the said Act, have power to try the said master or any of the said crew for any offences against the Merchant Shipping Act, 1854, in respect of which two Justices would, if the case were tried in the United Kingdom, have power to convict summarily, and by order duly made to inflict the same punishments for such offences which two Justices might, in the case aforesaid, inflict upon summary conviction: provided, that in cases where an offender is sentenced to imprisonment, the sentence shall be confirmed in writing by the senior naval or consular officer present at the place where the Court is held, and the place of imprisonment, whether on land or on board ship, shall be approved by him as a proper place for the purpose, and copies of all sentences made by any Naval Court summoned to hear any such complaint as aforesaid shall be sent to the commander-in-chief or senior naval officer of the station."

25 & 26 Vict., c. 63, s. 23. Power of cancelling certificate to rest with the Court which hears the case.

"The following rules shall be observed with respect to the cancellation and suspension of certificates, that is to say:—

"(1.) The power of cancelling or suspending the certificate of a master or mate by the 242nd section of the Principal Act conferred on the Board of Trade shall * * * * vest in and be exercised by the * * * * Naval Court * * * * by which the case is investigated or tried, and shall not in future vest in or be exercised by the Board of Trade.

"(2.) Such power shall extend to cancelling or suspending the certificates of engineers in the same manner as if 'certificated engineer' or 'certificated engineers' were inserted throughout such section after 'master' or 'masters:'

"(3.) Every such * * * * Court * * * * shall at the conclusion of the case, or as soon afterwards as possible, state in open Court the decision to which they may have come with respect to cancelling or suspending

certificates, and shall in all cases send a full report upon the case, with the evidence, to the Board of Trade, and shall also, if they determine to cancel or suspend any certificate, forward such certificate to the Board of Trade with their report:

25 & 26 Vict., c. 63, sec. 23.

"(4.) It shall be lawful for the Board of Trade, if they think the justice of the case require it, to re-issue and return any certificate which has been cancelled or suspended, or shorten the time for which it is suspended, or grant a new certificate of the same or any lower grade in place of any certificate which has been cancelled or suspended:

* * * * *

"(6). No certificate shall be cancelled or suspended under this section, unless a copy of the report or a statement of the case upon which the Investigation is ordered has been furnished to the owner of the certificate before the commencement of the Investigation. * * * * "

Sec. 24. Certificate to be delivered up

"Every master or mate or engineer whose certificate is (a) * * * * suspended or cancelled in pursuance of this Act shall, upon demand of the * * * * Court * * * * by which the case is investigated or tried, deliver his certficate to them, or, if it is not demanded by such * * * * Court, * * * * shall, upon demand, deliver it to the Board of Trade, or as it directs, and in default shall, for each offence, incur a penalty not exceeding fifty pounds."

34 & 35 Vict., c. 110, sec. 8. Power for Naval Courts to direct survey of ships.

"Any Naval Court may, if they think fit, direct a survey of any ship which is the subject of an Investigation held before them, and such survey shall be made in the same way, and the surveyor who makes the same shall have the same powers (b), as if the survey had been directed by a competent Court in the course of proceedings against a seaman or apprentice for desertion or a kindred offence."

36 & 37 Vict., c. 85, sec. 16.

"In every case of collision between two vessels, it

(a) As amended by 42 & 43 Vict., c. 72, s. 3, sub-sec. (4). See *ante*, page 65.

(b) 34 & 35 Vict., c. 110, s. 7.

36 & 37 Vict., c. 85, sec. 16.

Duties of masters in case of collision.

shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any), to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any), such assistance as may be practicable, and as may be necessary in order to save them from any danger caused by the collision; and also to give to the master or person in charge of the other vessel the name of his own vessel, and of her port of registry, or of the port or place to which she belongs, and also the names of the ports and places from which and to which she is bound.

"If he fails so to do, and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default.

"Every master or person in charge of a British vessel who fails, without reasonable cause, to render such assistance or give such information as aforesaid shall be deemed guilty of a misdemeanour, and if he is a certificated officer an inquiry into his conduct may be held and his certificate may be cancelled or suspended."

Places where the Court may be summoned.

Naval Courts can only be summoned by an officer in command of one of Her Majesty's ships on a foreign station, or, in the absence of such an officer, by a consular officer; from this it would seem to follow that the enactment applies only where such persons are usually to be found, that is to say, to places out of the British dominions.

Constitution of the Court.

The Court must consist of not more than five, nor less than three members. Of these, where the circumstances do not render it impossible, one must be a naval officer of the rank of lieutenant, or some higher rank, one a British consular officer, and one a master of a British merchant ship. The rest are to be naval officers, masters of British merchant ships, or merchants of British nationality. The master and consignee of the ship to which the complainants and those complained against belong, are disqualified, but the officer who summons the Court may sit thereon. The President of the Court is to be the naval or consular member of the Court of highest

rank. From this last requirement, it follows that the Court to be sufficiently constituted, must contain either a naval or a consular officer. A consular officer includes consul-general, consul, vice-consul, and any person for the time being discharging the duties of consul-general, consul, or vice-consul ([a]).

Expert advice.

No power is given for the appointment of an engineer or surveyor as a member of a Naval Court but, when the Court requires the assistance of skilled advice relating to machinery, shipbuilding, local navigation, or any other point involved in the case, experts may be called and examined by the Court as witnesses.

Character of Naval Courts.

A Naval Court in fact sits in a double capacity—as a Court for the hearing and punishment of offences, and as a Court of Inquiry for the Investigation of the causes of shipping casualties with superadded judicial functions. As has been seen, the two aspects are jointly treated of by the statute, and hence reference is, in this chapter, made to functions which may not fall in strictness within the scope of this treatise.

Circumstances in which summoned.

The circumstances which give rise to the summoning of a Naval Court are apparent from the section above printed. It will be seen that considerable latitude is given to the naval or consular officer for the exercise of discretion in summoning a Court. This must necessarily be so from the nature of the case. When the motive for assembling a Court is the investigation of the cause of a wreck or abandonment, it is clear that a Court need not be summoned when with reasonable certainty it is apparent that the casualty was the result of unavoidable accident, where the officers and crew are clearly free from blame, and where no public benefit can be derived from a Formal Investigation. But a Court should be summoned, if there is any suspicion that the casualty happened through the fault of the master or crew, or from insufficient manning, or the unseaworthiness of the vessel, or from any cause the investigation of which may be attended with benefit, *e.g.*, the deviation of the compass, errors in charts, or a want of proper lights or sea-marks. In short, every other case of a wreck, abandonment, or important casualty

([a]) 17 & 18 Vict., c. 104, s. 2.

to a British ship outside British jurisdiction (except those above-mentioned) should, if possible, be investigated by a Naval Court. It seems however that a Naval Court need not be held in any case in which a consul can deal satisfactorily with the matter without the assistance of a Naval Court, and in all cases when practicable it would be well that a consultation should be held between a naval officer and a consul, before summoning a Naval Court ([a]).

Jurisdiction and Powers of Naval Courts.

Jurisdiction limited to British ships.

The jurisdiction of Naval Courts, as might have been predicated from the places where they are held, is confined to matters arising in connection with British ships. The meaning of this term has been discussed in an earlier chapter ([b]).

Standing by after a collision.

Whether a Naval Court can deal with the particular offence created by section 16 of the Merchant Shipping Act, 1873 ([c]), is a question of difficulty due to the vagueness of the concluding portion of the section, which leaves the Inquiry thereby authorised altogether undefined. It may be argued that a Naval Court which is investigating the cause of a collision, and is therefore in possession of the case, may extend the Inquiry to matters subsequent to the casualty, and into the conduct of the master thereafter. There is much to be urged in favour of the practical convenience of this course, and it would be in furtherance of the enactment, while not excluded by any of its terms. The jurisdiction would arise only in respect of the master of a British ship, who is subject to Naval Courts; and in default of such an Inquiry the master might frequently escape entirely the consequences of his misdeed.

It may be contended that the power of cancellation or suspension could be exercised by virtue of the section under discussion, but the objection to be urged against the contention is that the section names *no* Court.

([a]) Instructions relating to Naval Courts, 1878. See Appendix, page 359.

([b]) See *ante*, page 76.

([c]) This section is quoted in full at page 163.

In strictness we have only to deal in this work with the class of cases mentioned in sub-section 3 of section 260 of the Merchant Shipping Act, 1854, above quoted ([a]), viz., the wreck, abandonment, or loss of a British ship, but for the sake of clearness in explaining the subsequent provisions of the statutes, the other subjects of inquiry included in sub-sections 1 and 2 are also referred to here, and a further account of the powers and jurisdiction of Naval Courts in regard to those cases will be found in the Appendix ([b]). The Court has, for the purpose of conducting its Investigations, power to summon and compel the attendance of witnesses, and to administer oaths, and order the production of documents ([c]). No express direction is given in the statute as to the mode in which these powers are to be carried into effect, and the Court must be left to such means as may be at the disposal of the consul. These sometimes depend on the terms of the particular treaty under which this country is entitled to have a consular representative at the place where the Court is held. With respect to the enforcement of its summonses or orders upon British subjects there is some difficulty, but it may be that the neglect or refusal to yield obedience amounts to causing a prevention or obstruction of the conduct of the case or Investigation by the Court, when the penal consequences imposed by the 266th section ([d]) upon such behaviour would follow.

Summoning witnesses, &c.

The Court has also power to order, for its own assistance, a survey of any ship which is the subject of an Investigation held before it. This survey is to be made in the same way, and the surveyor who makes it is to have the same powers, as if the survey had been directed by a competent Court in the course of proceedings against a seaman or apprentice for desertion or a kindred offence ([e]), that is, the same powers as an Inspector appointed by the Board of Trade under the Merchant Shipping Act, 1854 ([f]).

Surveys of ships.

([a]) See *ante*, page 158.
([b]) See Appendix, page 359.
([c]) 17 & 18 Vict., c. 104, s. 262.
([d]) See *ante*, page 161.
([e]) 34 & 35 Vict., c. 110, s. 8. See *ante*, page 163.
([f]) As to what these powers are, see sec. 15 of 17 & 18 Vict., c. 104, *ante*, page 34; and 34 & 35 Vict., c. 110, ss. 7 and 8.

Further powers of Naval Courts.

Further powers which may be exercised by a Naval Court are those enumerated in the 263rd section of the Merchant Shipping Act, 1854, and the 18th section of the Merchant Shipping Act Amendment Act, 1855, both of which are printed above ([a]). The offences mentioned in the last-named section include offences under 17 & 18 Vict., c. 104, which are tabulated in the Appendix ([b]), and any sentence of imprisonment inflicted under that section by the Naval Court must be confirmed in writing by the senior naval or consular officer at the place where the Court is held, and he must approve the place of imprisonment, whether on land or sea, and a copy of all sentences must be sent to the commander-in-chief or senior naval officer of the station ([c]).

Grounds for cancellation or suspension of certificates.

The Naval Court may also in certain events cancel or suspend the certificate of a master, mate, or engineer. This power is of very practical importance to the officers. It is conferred by 25 & 26 Vict., c. 63, s. 23, sub-secs. 1 and 2. Such power of cancellation or suspension may be exercised, if upon an Investigation the Naval Court decides that a master, mate, or engineer has caused the loss or abandonment of, or serious damage to the ship, or loss of life, by his wrongful act or default ([d]). What is a wrongful act or default within this power has been discussed in an earlier chapter ([e]). The Naval Court may also cancel or suspend the certificate of a master if it orders him to be superseded under the provisions of the 263rd section of the Merchant Shipping Act, 1854. As to supersession unanimity is required from the Court, but not as to the cancellation or suspension of the certificate. A Court may also, if the view above suggested ([f]) of the 16th section of the Merchant Shipping Act, 1873, is right, cancel or suspend the master's certificate, if he, without reasonable cause, does not stand by a vessel

([a]) See *ante*, pages 159 and 162.

([b]) Appendix, page 371.

([c]) The Board of Trade may suspend or cancel the certificate of a master, mate, or engineer if he is shown to have been convicted of any offence, 17 & 18 Vict., c. 104, s. 242, sub-sec. 4; and 25 & 26 Vict., c. 63, s. 23, sub-sec. 2.

([d]) See *ante*, pages 161-162.

([e]) See *ante*, page 89.

([f]) See *ante*, page 166.

which has been in collision with his own, or neglects to give the information he is thereby required to give. Similarly they may, for the same cause, deal with the certificate of the officer in charge ([a]).

Incompetency or misconduct.

It is worthy of note that the grounds of cancellation or suspension of certificates by a Naval Court do not, as in the case of an investigation before a Local Marine Board (sub-section 1 of section 242, Merchant Shipping Act, 1854), or in the case of an Investigation by a Court or tribunal in a British possession (sub-section 5 of the same section), comprise in terms incompetency, or a "gross act of misconduct, drunkenness, or tyranny." But Naval Courts nevertheless possess the power indirectly of punishing gross misconduct or incompetency by the suspension or cancellation of certificates, for if unanimous that the safety of the ship or crew or the interest of the owner absolutely requires it, the Court can supersede the master, and may then, as above mentioned, suspend or cancel his certificate ([b]). It is obvious that the conduct which, in the opinion of the Court, requires for the sake of the safety of the ship or crew, or the interest of the owner that the master should be superseded, may be conduct quite unconnected with any casualty. Yet the Court may, in the manner above described, suspend or cancel his certificate. They may do so, for instance, for incompetency, gross misconduct ([c]) tyranny, or drunkenness, if it leads them to the unanimous conclusion that he should be superseded.

Supersession of master.

Certificates to which enactments apply.

The above powers of cancellation and suspension apply to the certificates of competency or service authorised by the Merchant Shipping Act, 1854. Certificates are granted in the Colonies in conformity with the provisions of 32 Vict., c. 11, s. 8 ([d])

([a]) Who is the officer in charge is a question of fact; see *ex parte* Ferguson, L.R. 6 Q.B.280, for an example, *ante*, page 142.

([b]) The expression "if he is superseded" in the above sub-sec. 3 of section 242, Merchant Shipping Act, 1854, applies to a mate as well as a master, but the power to supersede as given to a Naval Court by section 263, Merchant Shipping Act, 1854, is confined to the master The Court has power by the latter section however to discharge a mate or engineer. See *ante*, page 159.

([c]) For observations upon incompetency and misconduct, see *ante*, pages 140-142.

([d]) A list of the Colonies which have complied with the above statute is printed in the Appendix, pp. 394-400.

and Orders in Council made thereunder, and have the same validity as Imperial certificates. The Board of Trade must, under this Act, be satisfied that they are liable to be forfeited for the like reasons and in the like manner as the Imperial certificates, and it should follow that they may be dealt with by a Naval Court. Power is, however, given to the Queen by the Order to extend the provisions of the Merchant Shipping Acts which relate to certificates of competency, to the certificates referred to in the Order, and to impose such conditions and make such regulations with respect to these certificates and to their use, issue, delivery, cancellation and suspension, as to Her Majesty may seem fit. The Colonial legislation and the Order in Council must, therefore, have a very material bearing upon the power of the Naval Court. The Court has no power under Imperial law to deal with any Colonial certificates not granted as above mentioned ([a]).

Decision must be given in open Court.

A decision with respect to cancelling or suspending certificates must be given in open Court at the conclusion of the case, or as soon afterwards as possible, and the certificate, if cancelled or suspended, must be sent to the Board of Trade with the report of the Court and the evidence ([b]). No certificate can be cancelled or suspended unless a copy of the report, or a statement of the case upon which the Investigation has been ordered, has been furnished to the owner of the certificate before the commencement of the Investigation ([c]).

Copy of report or a statement of the case.

Payment of costs and compensation.

In addition to the other judicial powers possessed by Naval Courts, they have also power to order the costs of the proceeding before them, or any portion thereof, to be paid by any of the parties thereto, and may order any person making a frivolous or vexatious complaint, to pay compensation for any loss or delay caused thereby; and any costs or compensation so ordered shall be paid by such person accordingly ([d]), and may be recovered in the same manner as

([a]) Instructions relating to Naval Courts, 1878. See Appendix, page 365.

([b]) 25 & 26 Vict., c. 63, s. 23, sub-sec. 3. See *ante*, page 162.

([c]) *Ibid*, sub-sec. 6. See *ante*, page 163.

([d]) 17 & 18 Vict., c. 104, s. 263, sub-sec. 7. See *ante*, page 160.

seamen's wages are recoverable[a], and if ordered to be paid by a seaman may be deducted from his wages[b]. All orders duly made by such Court under these powers are, in any subsequent legal proceedings, to be deemed conclusive as to the rights of the parties[c].

Effect of orders in subsequent legal proceedings.

Every Naval Court must, under the 265th section of the Merchant Shipping Act, 1854, make a report to the Board of Trade[d]. This report is required to be signed by the President of the Court[e], and to contain the particulars[f] named in the above section. They are also required by the 23rd section of the Merchant Shipping Act Amendment Act, 1862[g], to make a special report as to any cancellation or suspension.

Report to be made to Board of Trade.

(a) Seamen's wages are recoverable: I. *In England.*—1. In the Probate, Divorce, and Admiralty Division of the High Court, subject to the necessity for a certificate for costs if less than £50 is recovered; (24 Vict., c. 10, s. 10), and subject to certain other provisions when less than £50 is sought, contained in 17 & 18 Vict., c. 104, s. 189. 2. In the County Court up to £150, with an appeal to the Probate, Divorce, and Admiralty Division of the High Court if over £50 decreed (31 & 32 Vict., c. 71, ss. 3, 26-31). 3. By action against the master or owners in the High Court, or up to £50 in the County Court. 4. Before two Justices or a Stipendiary Magistrate if not over £50, whose decision is final (17 & 18 Vict., c. 104, ss. 188, 519). II. *In Scotland.*—1. In the Court of Session where the sum claimed amounts to £50 or more, subject to the provisions of 17 & 18 Vict., c. 104, s. 189. 2. In the Sheriff's Court, or Justice of Peace Court, summarily, where the amount claimed does not exceed £50, in which case the judgment of the Sheriff or Justices is final (17 & 18 Vict., c. 104, s. 188). 3. In the Sheriff ordinary Court up to any amount, the judgment of the Sheriff being subject to review if the sum claimed exceeds £25. 4. In the Sheriff Small Debts Court up to £12 (7 Wm. IV., and 1 Vict., c. 41; 16 & 17 Vict., c. 80, s. 26). III. *In Ireland.*—1. In the Probate, Divorce, and Admiralty Division of the High Court (30 & 31 Vict., c. 114, s. 33), as to whether this is subject to the restrictions contained in 17 & 18 Vict., c. 104, s. 189, see 30 & 31 Vict., c. 114, s. 27, and Boyd on the Admiralty Court in Ireland, page 20. 2. The Recorders or Chairman of Quarter Sessions Court up to £200 with an appeal to the Admiralty, &c., Division of the High Court (30 & 31 Vict., c. 114, ss. 74-86, 87 *et seq.*) 3. Before two Justices or a Stipendiary Magistrate, up to £50, whose decision is final (17 & 18 Vict., c. 104, ss. 188, 519). IV. *By a suit in a Consular Court or a Foreign Court*, if the seaman is proved to have left the ship under certain special conditions (17 & 18 Vict., c. 104, ss. 190, 207).

(b) 17 and 18 Vict., c. 104, s. 263, sub-sec. 7. See *ante*, page 160.

(c) *Ibid.*

(d) See further as to this report, post, page 176.

(e) See post, page 177.

(f) As to the admission of such report in evidence see 17 & 18 Vict., c. 104, s. 265, *ante*, page 160.

(g) 25 & 26 Vict., c. 63, s. 23, sub-sec. 3. See *ante*, page 162.

Report should state clearly the jurisdiction exercised by the Court.

Having regard to the varied nature of the jurisdiction conferred upon a Naval Court, their report should show clearly the branch of jurisdiction which they have exercised in the particular case. If, for instance, they have superseded a master, the report should contain a statement that the Court were unanimous that the safety of the ship or crew, or the interest of the owner (as the case may be), absolutely required the supersession, and that they had superseded him accordingly, and that by reason of such supersession they have suspended or cancelled his certificate; if the conduct in question had reference to a casualty, the report should state that the loss or abandonment of, or serious damage to, any ship or loss of life (as the case may be), had been caused by the wrongful act or default of the master ([a]). Again, if the jurisdiction exercised by the Court was that conferred upon them by the statute 18 & 19 Vict., c. 91, s. 18 ([b]), the nature of the offence, the facts which show the jurisdiction of the Court, and the order made in pursuance of that jurisdiction should be clearly stated.

Procedure of Naval Courts.

Court must be governed by nature of case investigated.

Little guidance is given by the Merchant Shipping Acts as to the mode in which the Investigation is to be conducted, and the Court must be governed by its own view of what is the course of proceeding appropriate to the nature of the case before it; for example, the mode of conducting the case would probably be materially different when a complaint against some seaman or officer is being heard, from that adopted when the Court is summoned for the purpose of inquiring into the cause of a wreck ([c]). The only specific directions given are:—

Statutory directions: 1. Person charged to have opportunity of defence.

1. That the Investigation is to be conducted in such manner as to give any person against whom any charge is made an opportunity of making a defence ([d]).

([a]) See *ante*, page 168, and Appendix, pages 595 and 598.
([b]) See *ante*, page 161, and Appendix, page 597.
([c]) The Rules in regard to Courts of Formal Investigation in the United Kingdom may usefully be consulted as a guide for Naval Courts also, see page 106, *et seq.*
([d]) 17 & 18 Vict., c. 104, s. 262. See *ante*, page 159.

2. The requirement before mentioned [a] that as a condition precedent to the cancellation or suspension of a certificate, a copy of the report, or a statement of the case upon which the Investigation is ordered must be furnished before the commencement of the Investigation [b], to the certificated officers of the ship whose conduct is to be called in question.

2. Copy, Report, or Statement of case to be furnished.

3. That the decision to which the Court have come with respect to cancelling or suspending certificates must be stated in open Court at the conclusion of the case, or as soon afterwards as possible [c].

3. Decision. to be given in open Court.

4. That the Court must in all cases send a full report upon the case with the evidence to the Board of Trade, and also, if they determine to cancel or suspend any certificate, they must forward it to the Board of Trade with their report [c].

4. Report with the evidence to be sent to Board of Trade.

In the remaining portion of this chapter there is set out a general outline of the procedure based upon the Instructions issued by the Board of Trade relating to Naval Courts, which may be followed in the case of Investigations into the wreck, abandonment, or loss of, a vessel, or into the conduct of a master with a view to decide as to his being superseded.

The first step will be for the naval or consular officer to summon [d] a Naval Court constituted in the prescribed manner [e].

Preliminary proceedings.

The Court will then summon [d] the parties, that is to say, the complainant (if any), and any person whose conduct is intended to be called in question. The summons should specify the time and place at which the Court is to sit.

Summons to accused.

If the certificate of a master, mate, or engineer is to be called in question, he must, as above-mentioned, be furnished before the commencement of the Investigation with a copy of the report, or a statement of the case upon which it has been ordered, and in order to give him an opportunity of making a defence, it will be proper to notify to the certificated officer in writing the precise nature of any charge which is

(a) See *ante*, page 170.
(b) 25 & 26 Vict., c. 63, s. 23, sub-sec. 6. See *ante*, page 163.
(c) *Ibid.*, sub-sec. 3, see page 162.
(d) Forms of summonses, &c., will be found in the Appendix, page 588.
(e) See *ante*, page 163.

intended to be brought against him. This will be most conveniently done in the body of the summons for his attendance at the Naval Court as in the case of an ordinary summons before a Magistrate.

Summons to witnesses.

The Court will also summon [a] the witnesses whose evidence appears likely to be material [b].

Proceedings in Court.

The proceedings should commence with the reading of the summons issued by the naval or consular officer for the assembling of the Court.

If the parties summoned are not present, proof must be furnished of the service upon them of the summons for their attendance, and in any case where a certificate is to be called in question, proof must be given of the service upon the officer of a copy of the report or a statement of the case upon which the Investigation has been ordered.

The complainant (if any), and the parties summoned are the parties to the proceedings.

Formerly every certificated officer was required to deliver up his certificate into the custody of the Court before the commencement of the Inquiry [c], but as we have seen [d] that requirement has been abolished by statute unless the certificate is suspended or is cancelled.

Unless there be any special reason to the contrary, the Court should be open to the public [e].

The governing principle laid down in the Merchant Shipping Act, 1854, being that the proceedings shall be conducted in such manner as to give any person against whom any charge is made an opportunity of making a defence [f], it is necessary that a certain amount of formality and certain well known rules should be observed. The principal points are, that the person whose conduct is under Investigation shall be present while the whole of the evidence is being taken, and, above all, that he shall have the fullest opportunity for cross-examination of the wit-

(a) Forms of summons, &c., will be found in the Appendix, page 589.

(b) As to the mode in which the attendance of parties and witnesses is to be enforced, see remarks *ante*, page 167.

(c) Instructions relating to Naval Courts, 1878, Appendix, page 367.

(d) See page 163.

(e) Instructions relating to Naval Courts, 1878, Appendix, page 367. 17 & 18 Vict., c. 104, s. 262. See *ante*, page 173.

nesses; that he shall, if he so desires, be represented by an advocate, and that he shall be permitted to adduce evidence on his own behalf, and to make a statement in his defence. And further, all evidence should, whenever practicable, be taken on oath [a].

The Court has power to order the production of documents [b].

The proceedings might conveniently bear a general analogy to that prescribed by the General Rules for Formal Investigation in the United Kingdom, and the order of procedure would be somewhat as follows:—

Order of procedure.

The witnesses in support of the complaint, or in regard to the circumstances of the casualty, should first be sworn and examined by the complainant (if any), or otherwise by the Court. The witnesses should then be severally cross-examined by the person on his defence, or his advocate, and afterwards re-examined by the complainant (if any) or by the Court, as the case may be.

That stage of the proceedings having been concluded, the evidence so given might be summed up by the complainant (if any), or if there be none, the Court might indicate to the person on his defence in what respects it appeared to bear an adverse complexion. He should then have liberty to produce witnesses on his own behalf, and any party to the proceedings might, with the permission of the Court, bring forward further witnesses whose examination, cross-examination, and re-examination should be conducted in such order as the Court may direct.

If the person on his defence does not tender any evidence, or be not himself examined, he should be allowed to address the Court in defence, and in any case when the whole of the evidence is concluded, the parties should have liberty to address the Court, the complainant (if any) having the right to speak last by way of reply, whenever there is any evidence adduced for the defence.

Some further guidance upon the mode of procedure

(a) Instructions relating to Naval Courts, 1878, Appendix, page 367. Form of oath will be found in the Appendix, page 593.
(b) 17 & 18 Vict., c. 104, s. 262. See *ante*, page 159.

may be obtained from the detailed description of Investigations before a Local Marine Board (*ante*, page 143).

It will, however, be borne in mind that no code of procedure has been laid down in the statute other than the directions before described ([a]), and that accordingly the control and direction of the proceedings rests, in fact, with the Court itself.

Decision.

If the certificate of an officer has been called in question the decision with respect to cancelling or suspending it must, at the conclusion of the case, or as soon afterwards as possible, be stated in open Court ([b]).

The powers which may be exercised by a Naval Court at the conclusion of the case, including the powers to order payment of costs and compensation, have been already fully stated ([c]), and it would be convenient that the decisions and sentences of the Court on every point should be stated in open Court, although it is only in the case above-mentioned that the statute has made that course obligatory ([d]).

If the Court exercise their power of superseding the master, the presiding officer of such Court shall indorse on the certificate of registry, a memorandum of such change of master, and subscribe his name to such endorsement, and forthwith report the change of master to the Registrar-General of Shipping and Seamen ([e]).

Report to the Board of Trade.

When the proceedings are concluded, a report ([f]) must be made to the Board of Trade. It is necessary for the administrative purposes of the Department to be furnished with other and more ample details of every Investigation by a Naval Court than those prescribed by statute, and accordingly consular officers are instructed that the report should contain the following particulars ([g])—

([a]) See *ante*, page 172.
([b]) 25 & 26 Vict., c. 63, s. 23, sub-sec. 3. See *ante*, page 162.
([c]) See *ante*, page 170.
([d]) Instructions relating to Naval Courts, 1878, Appendix, page 367.
([e]) 17 & 18 Vict., c. 104, s. 46.
([f]) See *ante*, pages 160 and 171, as to contents. Form of Report will be found in the Appendix, page 582.
([g]) Instructions relating to Naval Courts, 1878, Appendix, page 367.

Particulars to be set forth in the report partly statutory (a) and partly for administrative purposes.

"(*a*) A statement or copy of the complaint or other matter which may have caused the summoning of the Court:

"(*b*) The steps taken thereupon by the officer, naval or consular:

"(*c*) A copy of the notice given to any person against whom any charge is made:

"(*d*) The names and descriptions of the persons composing the Court:

"(*e*) The depositions and other evidence taken before the Court, signed when practicable by the witnesses:

"(*f*) The order made by the Court:

"(*g*) If any seaman or apprentice is discharged, an account of his wages:

"(*h*) When a ship has been wrecked, lost, or abandoned, a narrative of the material facts which the Court considered proved, with any necessary references to, or extracts from, the evidence, the opinion of the Court as to the precise cause or causes of the casualty, a negation of any suggestion as to the cause of loss not supported by the evidence, the opinion of the Court as to whether any person has been guilty of any negligence or default, and whether such negligence or default occasioned or contributed to the loss of the ship, and finally, a statement of any special precautions which the case shows should be taken in future, together with any remarks on the conduct of the master and crew, or other circumstances connected with the case, which the Court may think fit to make. The report must be signed by the President of the Court with his official title, and if he be a consul, his consular seal should be attached. The depositions and all the documents contained or referred to in it must be originals, and not copies, unless they are documents which it is absolutely necessary to keep for some other purpose; in which case the copies must be certified by the President to be correct. The utmost attention should be paid in observing these formalities, as without them the proceedings of the Court may be rendered nugatory. The report must be then sent home by the first opportunity to the

(a) See *ante*, page 160.

Board of Trade, with a covering letter from the President or the consul" (a).

Further directions for the guidance of the Court.

"When a certificate has been cancelled or suspended by order of a Naval Court, it should be forwarded to the Board of Trade with the report of the Court, if it has been granted in the United Kingdom, but if in a Colony, to the Governor or Administrator of the Colony in which it was granted" (b).

"The only exception to this rule is when delay is likely to occur before the certificate is returned beyond the date to which the certificate is suspended. For instance, if a certificate is suspended for three months by a Naval Court held at Batavia, and the master's residence is at Singapore, the Court should send the certificate to the Governor of the Straits Settlement to be returned on the expiration of the sentence."

"In such cases the report sent to the Board of Trade should carefully explain how the certificate has been disposed of" (c).

"In all cases where gross misconduct or incompetency is shown, the Board of Trade have expressed an opinion that it will be better not to suspend the certificate for a certain time, but to cancel it with a recommendation to the Board of Trade to return it at a stated time on being satisfied, by certificates of good conduct, or by examination, that the officer is again fit to be in possession of it" (d).

"As it is not advisable, as a rule, that officers should be entirely precluded from following their calling, the Court when cancelling or suspending a certificate should take into consideration whether the officer may fairly be entrusted with a certificate of a lower grade than that which has been cancelled or suspended, and make a recommendation accordingly that a certificate for such a grade should be issued to him" (e).

(a) Instructions relating to Naval Courts, 1878, Appendix, page 368.
(b) *Ibid.*
(c) *Ibid.*
(d) *Ibid.* Appendix, page 369.
(e) *Ibid.*

"All Orders of a Naval Court should be entered in the log-book of the ship in connection with which the Court has been held, and should be signed by the President of the Court" (a).

"The Orders should be framed with great care, fully and distinctly, and in the strictest accordance with the provisions of the Merchant Shipping Acts, so that their authority may not be questioned in any particular when produced in any subsequent legal proceedings" (b).

"The Court should point out to any one who wilfully and without due cause prevents and obstructs the summoning or the conduct of any case or Investigation by any Naval Court, that he thereby incurs a penalty of fifty pounds, or imprisonment with hard labour for twelve weeks, and that they will report the names and addresses of any person doing so, and will, if necessary, make use of any assistance that local authorities may be willing to render to prevent such obstructions, but the Court has no power under the Act to enforce the penalty." (c).

(a) Instructions relating to Naval Courts, 1878, Appendix, page 369.
(b) *Ibid.*
(c) *Ibid.*

CHAPTER X.

Re-hearing and Appeal.

No right of appeal existed until the passing of the Shipping Casualties Investigations Act, 1879.

No right of appeal existed until the passing of the Shipping Casualties Investigations Act, 1879. While the Board of Trade retained the power [a] to cancel or suspend certificates under the Merchant Shipping Act, 1854, they exercised it or not according to the view which they took of the facts and circumstances of the case reported to them by the Court which had held the Inquiry, and of the opinion of the Court thereon. There was no power of obtaining anywhere a review of the finding of the investigating tribunal, although the Board of necessity deliberated upon the case, when the report was adverse to a certificated officer, before dealing with his certificate. Upon the transference of the cancelling and suspending power to the investigating tribunal, authority was given to the Board to return a cancelled certificate, or issue a new one, or shorten the time of suspension, and for that purpose they had still to exercise to some extent the right to review. Except however, as thus controlled, the decision of the Court upon the merits was final, and the discretion of the Board itself was never open to question. The only method of procedure available to an aggrieved officer was by way of memorial to the Board of Trade to reconsider the matter.

No general feeling on the subject.

No general feeling, however, appears to have arisen in favour of a right of appeal, until a recent period. The evidence laid before the Select Committee of 1860 was not specially directed to that point, and the only witnesses who expressly advocated such a right before the Royal Commission of 1873 were not shipowners, or shipmasters, but lawyers [b].

[a] 17 & 18 Vict., c. 104, s. 242. See *ante*, pages 56, 149, 161.

[b] Mr. A. T. Squarey, of Liverpool, expressed his opinion that there should be an appeal to some tribunal altogether independent of the Board of Trade. This he considered would go very far indeed to remedy what had been complained of in reference to the

The absence of agitation in this respect was, however, by no means due to a feeling of satisfaction with the Courts of Formal Investigation. On the contrary, they were frequently assailed, but the efforts of their opponents were directed rather to their complete overthrow, or to a radical alteration in their constitution and procedure, than to obtaining the privilege of an appeal from their decisions.

The Board of Trade was in effect a Court of review.

The Board of Trade, though deprived of its original power of cancellation or suspension, was thus in effect often a Court of review in respect of punishment, but the power was only sparingly exercised. It was clear that the Court which had tried the case, and had seen the witnesses, had the best means of forming a correct judgment, and except to redress manifest injustice, or to grant certificates of a lower grade, the decisions of the Courts should not have been, and were not in fact, disturbed by the Board of Trade.

Control of the superior Courts of Law.

The Superior Courts could, and sometimes did, exercise control over Courts of Inquiry or Investigation. The remarks of Mr. Theodore Thring on the powers of the Courts of Law over Naval Courts Martial are applicable to Courts of Formal Investigation. He says(*) :—"The jurisdiction of Naval Courts Martial and the judicial powers of Commanding Officers are confined within certain limits by positive enactment; if they pass these limits, they are subject to the controlling authority of the Courts of Westminster Hall; an authority which is exercised over all inferior Courts, where they take cognizance of any matter not within their jurisdiction, or where in handling matters clearly within their cognizance they transgress the bounds prescribed to them by the laws of England." (3 Bl. III., per Lord Loughborough in *Grant* v. *Gould*, 2 H. Bl. 100.) Resort has accordingly been had to the Court

decisions of the Courts of Formal Investigation. Upon the question of the Court best fitted to hear such appeals, he suggested the Court of Admiralty, as being almost constantly sitting, and cases were brought there and disposed of very rapidly, at a comparatively moderate expense. (Report and Evidence of Royal Commission on Unseaworthy Ships, vol. II., 1874, pp. 327-8). The late Mr. J. O'Dowd also advocated an appeal to the Probate, Divorce and Admiralty Division of the High Court, *Ibid*, page 147.

(*) Thring's Crim. Law of the Navy, 2nd Ed., page 289.

of Queen's Bench upon questions of the kind above described, and that Court has exercised its authority over decisions as well of the Wreck Commissioner, as of Justices and Stipendiary Magistrates. In the case of *ex parte Ferguson* (a) the jurisdiction of two Justices to suspend a certificate was called in question on various grounds. The proceedings took the form of a motion for a Certiorari to bring up the order of the Justices suspending the certificate, but the application was refused by the Court of Queen's Bench. In *ex parte Minto* a Writ of Prohibition to the Stipendiary Magistrate was moved for in the Queen's Bench Division and refused on the merits. A second application, arising out of the same Formal Investigation, for a Certiorari on fresh grounds to bring up the Magistrate's order suspending the master's certificate for three months, was successful, and the order was accordingly quashed (b).

Motion for Certiorari.

Writ of Prohibition.

The result of these cases is to establish beyond doubt the authority of the Superior Courts over the Courts of Formal Investigation when they either exceed their statutory powers or act without jurisdiction.

Re-hearing.

No mode of appeal or of obtaining a re-hearing upon the facts.

It will be noticed that the proceedings above described are confined to applications on technical grounds, and do not supply a means of obtaining a re-hearing of a case, or constitute an appeal upon the merits. So recently as the year 1878, the late Lord Chief Justice Cockburn remarked upon the absence of any power to order such a re-hearing (c). This defect in the procedure of a Formal Investigation has now been remedied. Strong representations having been made to Lord Sandon, when President of the Board of Trade, of the injustice suffered by shipmasters and shipowners for want of an appeal upon the facts, an Act was passed, at his instance, in the session of 1879, by which re-hearings and in certain cases appeals were authorized. This

(a) Referred to *ante*, pages 72, 75 and 86.

(b) *Ex parte Minto*, 35 L.T. N.S. 808; Sol. J., xxi., 274; 25 W.R. 251, see *ante*, page 123.

(c) The remark was made in the course of the argument in the above-mentioned case of *ex parte Minto*.

is the Shipping Casualties Investigations Act, 1879, which contains the following enactments on this subject:— 42 & 43 Vict., c. 72, sec. 2.

Re-hearing.

"(1.) Where an Investigation into the conduct of a master, mate, or engineer, or into a shipping casualty, has been held under the Merchant Shipping Act, 1854 (a), or any Act amending the same, or under any provision for holding such Investigations in a British possession, the Board of Trade may, in any case, and shall, if new and important evidence which could not be produced at the Investigation has been discovered, or if for any other reason there has in their opinion been ground for suspecting a miscarriage of justice, order that the case be re-heard, either generally or as to any part thereof, and either by the court or authority by whom it was heard in the first instance, or by the Wreck Commissioner, or in England or Ireland by a Judge of Her Majesty's High Court of Justice exercising jurisdiction in Admiralty cases, or in Scotland by the Senior Lord Ordinary, or any other Judge in the Court of Session whom the Lord President of that Court may appoint for the purpose, and the case shall be so re-heard accordingly.

Appeal (b).

"(2.) Where, in any such Investigation, a decision has been given with respect to the cancelling or suspension of the certificate of a master, mate, or engineer, and an application for a re-hearing under this section has not been made or has been refused, an appeal shall lie from the decision to the following Courts; namely,

"(*a*) If the decision is given in England, or by a Naval Court, the Probate, Divorce, and Admiralty Division of Her Majesty's High Court of Justice:

"(*b*) If the decision is given in Scotland, either division of the Court of Session:

"(*c*.) If the decision is given in Ireland, the High Court of Admiralty, or the Judge or Division of Her Majesty's High Court of Justice exercising jurisdiction in Admiralty cases.

(a) 17 & 18 Vict., c. 104.
(b) See page 185.

42 & 43 Vict., c. 73, sec. 2.

"(3.) Any re-hearing or appeal under this section shall be subject to and conducted in accordance with such conditions and regulations as may from time to time be prescribed by General Rules [a] made under section 30 of the Merchant Shipping Act, 1876 [b]."

Re-hearing.

The language of the above section is wide enough to include rehearings in the case of all

1. Formal Investigations into a shipping casualty in the United Kingdom by a Wreck Commissioner, Justices, or Stipendiary Magistrate:
2. Inquiries into the conduct or competency of a certificated officer by a Local Marine Board, or a tribunal specially appointed by the Board of Trade under section 241 of the Merchant Shipping Act, 1854:
3. Investigations into the conduct or competency of a certificated officer, or into a shipping casualty under the provisions for holding such Investigations in a British possession:
4. Inquiries or Investigations by a Naval Court abroad:
5. Inquiries under the 432nd and 448th sections of the Merchant Shipping Act, 1854.

Order to re-hear an Investigation.

Imperative in certain cases.

The Board of Trade may in their discretion order a re-hearing in any case. When new and important evidence which could not be produced at the Investigation has been discovered, or when for any other reason there is in their opinion ground for suspecting a miscarriage of justice, the Board has no discretion but must order a re-hearing. The order may be to re-hear the whole matter either generally, or only as to part. By the Merchant Shipping (Colonial Inquiries) Act, 1882 [c], re-hearings are authorized in every case in which by that Act jurisdiction is conferred, or capable of being conferred, on Colonial Courts or tribunals. But, as no authority has been designated with whom the power of ordering re-hearings is to rest, the provision will probably be a dead letter, and

[a] See Additional Rules (Appeals and Re-hearings), 1880, post, page 204.
[b] 39 & 40 Vict., c. 80, s. 30. See *ante*, page 62.
[c] 45 & 46 Vict., c. 76, s. 6. See post, page 186.

the re-hearing of Colonial Investigations will be governed by the Shipping Casualties Investigations Act, 1879.

Tribunal of re-hearing.

The re-hearing need not be by the tribunal that heard the matter in the first instance, but may be according to the Board's direction in all the above cases either by

The Court or authority by whom it was heard in the first instance, or

The Wreck Commissioner, or

In England or Ireland.

In England or Ireland, a Judge of Her Majesty's High Court of Justice exercising Admiralty jurisdiction, or

In Scotland.

In Scotland, the Senior Lord Ordinary, or any other Judge in the Court of Session appointed by the Lord President of that Court for the purpose.

These powers of re-hearing are very extensive, and will cover all cases in which dissatisfaction is felt with the original Inquiry.

An account of cases which have been re-heard will be found at page 189.

Appeal.

An appeal in all cases lies to a Superior Court.

The enactments relating to Appeals are printed at page 183, and it will be observed that the appeal is to a Superior Court. From a decision given in England or by a Naval Court it lies to the Probate, Divorce and Admiralty Division of the High Court of Justice. From a decision pronounced in Scotland the appeal is to either Division of the Court of Session, and from a decision in Ireland to the High Court of Admiralty or the Judge of a Division of the High Court of Justice exercising Admiralty jurisdiction. The form in which the latter provision was inserted in the Act, arose from the fact that the Irish Supreme Court of Judicature Act, 1877, had passed, but the provision in question had not, at the passing of the Shipping Casualties Investigations Act, 1879, been actually carried into effect.

Appeal from Colonial Courts.

No jurisdiction is given by the Act to the above Courts to entertain an appeal from a Court or tribunal established under the legislative authority of a British possession. From the finding of such a Court or tribunal there would therefore be no

Appeal from Colonial Courts.

appeal under the above Act. This has been altered, however, by the 6th section of the Merchant Shipping (Colonial Inquiries) Act, 1882, as to decisions in the cases enumerated in the 3rd section of that Act ([a]), but only as to those decisions. The appeal given by this Act has been excluded in the case of any ship registered in a British possession in which case therefore there would be no appeal unless one has been provided by the Colonial Legislature. It is not a condition precedent to an appeal under the last mentioned Act that a certificate should have been dealt with but decisions cancelling or suspending any other certificates than those granted under the authority of the Merchant Shipping Act, 1854, and the Merchant Shipping (Colonial) Act, 1869, are not subject to an appeal. The section is as follows :—

45 & 46 Vict., c. 76, sec. 6.

"Whenever any Inquiry authorized by or in pursuance of this Act has been held, a re-hearing of the case may be ordered, and if an application for such re-hearing has not been made or has been refused, an appeal shall lie from any order of ([b]) finding of the Court or tribunal holding such Inquiry to the following Court, namely, the Probate, Divorce, and Admiralty Division of Her Majesty's High Court of Justice in England.

"Provided always, that no appeal shall lie from any order or finding in an Inquiry into a casualty affecting a ship registered in a British possession, or from any decision respecting the suspension or cancellation of the certificate of a master, mate, or engineer, unless such certificate has been granted under the authority of the Merchant Shipping Act, 1854, or any Act amending the same, or of the Merchant Shipping Colonial Act, 1869 ([c]).

"Any such appeal shall be subject to and conducted in accordance with such conditions and regulations as may from time to time be prescribed by General Rules made under section 30 of the Merchant Shipping Act, 1876 ([d])."

([a]) See this section, *ante*, page 153.
([b]) *Sic.* The word "of" should obviously be "or."
([c]) 32 Vict., c. 11.
([d]) 39 & 40 Vict., c. 80.

An appeal under the Shipping Casualties Investigations Act, 1879, lies only from a decision which has been given with respect to the cancelling or suspension of the certificate of a master, mate, or engineer, and from none other. The party aggrieved may then appeal at once from such decision, and if he desire to avoid a re-hearing of his case by the Court which originally tried it, and to ensure a decision by a Superior Court, he will not apply to the Board of Trade to order a re-hearing, for the option of selecting the tribunal rests in that case with the Board. The appellant may, however, if he think fit, first apply to the Board of Trade to order a re-hearing, but if he do so he cannot appeal unless the application shall have been refused. It has been decided that an owner cannot appeal under the Act, the *ratio decidendi* being, that the right is given to those who are affected by the decision cancelling or suspending a certificate, *i.e.*, the officer whose certificate has been dealt with ([a]). Whether the Board of Trade can appeal from a refusal to deal with a certificate is a question not free from doubt. The Act is very wide in its terms, and one of the rules thereunder ([b]) seems to assume the possibility of an appeal by the Board. By analogy to the case of an owner, and having regard to the inferences to be drawn from the provisions for re-hearings, the better interpretation of the section would seem to be that the Board must proceed by way of a re-hearing and not of appeal, for the fact of their being dissatisfied with the decision would show that they had reason to suspect there had been a miscarriage of justice, and it is in that case imperative upon them to order a re-hearing. This is rendered the more clear because the conditions precedent to an appeal are, that an application for a re-hearing either has not been made, or has been made and refused. These conditions cannot relate to the Board of Trade, for such an application must necessarily be made to themselves by some other party to the Investigation.

No appeal except against a decision with respect to cancelling or suspending a certificate.

Appeal will not lie unless application for re-hearing be refused.

Owner cannot appeal.

As to appeal by Board of Trade.

The power to cancel or suspend the certificates of a master, mate, or engineer must be conferred by statute, but it will be observed that the Act now

Power to cancel or suspend certificates.

([a]) The *Golden Sea*, 7 Prob. Div. 194; 51 L.J. 64; 30 W.R. 842.
([b]) Rule 6. See post, page 205.

Power to cancel or suspend certificates.

under consideration contains no clause which purports to vest such a power in the Court of Re-hearing or the Court of Appeal. The Merchant Shipping Act Amendment Act, 1862, provides that the power of cancelling or suspending certificates conferred upon the Board of Trade by the 242nd section of the Merchant Shipping Act, 1854, shall vest in and be exercised by the Court or tribunal by which the case is investigated or tried ([a]). The statute only effects a transfer of the Board's powers from it to the Court or tribunal; no greater jurisdiction is given to the latter than the former possessed. Upon referring to the 242nd section ([b]) it will be seen that the power was to be exercised after the several Inquiries or Investigations mentioned in the Act of 1854. The question then is, can the cancellation or suspension be decreed after the Investigations authorized for the first time by the Act of 1879? Whether the mere fact of giving a Court power to re-hear a case heard by another tribunal, enables the former to do whatever the latter could have done, is a point of difficulty, but upon the answer to it must depend the decision. The Court of Appeal have held that "to hear" means to hear, determine and give judgment, or, in other words, to hear effectively, not to sit and listen to the evidence merely ([c]). If so, to re-hear must include the same powers, and the better opinion is that the Court re-hearing the case may suspend or cancel certificates if the Court originally holding the Investigation could have done so ([d]). The power of the Court of Appeal with respect to certificates was raised but not decided on one

([a]) 25 & 26 Vict., c. 63, s. 23, sub-sec. 1. See *ante*, page 162.

([b]) See *ante*, page 161.

([c]) *Ex parte Green*, 7 Q.B.D. 273, per L.J. James at page 285.

([d]) It is laid down in *Rex* v. *Bourne*, 7 A. & E. 58; *Reg.* v. *Silversides*, 3 Q.B. 406, and the cases there cited, that in criminal cases the Court of Error could only affirm or reverse the judgment of the Court below, nor could the record be remitted to the inferior Court for the pronunciation of the correct judgment unless it had in reality pronounced no judgment, and was in that way not *functus officio*. The principle was somewhat different in civil cases (see the case above and Comyn's Digest, "Pleader," 3 B. 20). Error was usually brought in respect of error in law, whereas appeals are usually on the law and the facts. The Judicature Acts and Rules expressly give the Court of Appeal all the powers of the Court below.

occasion ([a]). Appeals, however, can only be against a cancellation or suspension, and in practice no difficulty arises, as the Board of Trade always has the power in this respect of mitigating the decision of the Court of Investigation ([b]), and will act upon the suggestion of the Appellate Court.

It is to be hoped that the Legislature may see fit to extend the right of appeal to every party affected by a decision or finding of a Court of Investigation.

An account of the Appeals already heard will be found at page 194.

CASES.

Re-hearing.

The *Cerwyn*.

In the case of the loss of the steamship *Cerwyn*, the Formal Investigation was held before two Justices and Assessors at Falmouth ([c]). They found that the casualty was caused by a serious error in the ship's reckoning, which might have arisen either from an extraordinary or unknown current, or from an easterly deviation in the compass which was not allowed for or discovered by the master, and as he steered by a deviation card, and had no means of testing its correctness, the Court did not find him in default. The Board of Trade being dissatisfied with the above finding, ordered a re-hearing before the Wreck Commissioner at Westminster. The Court over-ruled the decision of the Court of Formal Investigation, and found that the errors in the ship's reckoning which caused the casualty were due to mistake on the part of the master, and his neglect to use the lead, and correct his compasses at every opportunity. The Court differed from the finding arrived at by the Justices in regard to the reliance of the master upon his deviation card, and expressly found that he was not justified in trusting to that alone. The Board of Trade did not ask that the master's certificate should be dealt with, or apply for costs, and an

([a]) The *Kestrel*, 6 Prob. Div. 182; 30 W.R. 842; 45 L.T. N.S. 111, page 114.

([b]) See *ante*, page 180.

([c]) The *Cerwyn*, Report dated 27th April, 1880.

The *Cerwyn.*

application for costs on the part of the owners was refused on the ground that they ought to bear their share of the responsibility for having appointed such a master. Three witnesses were produced by the Board of Trade and examined, and the evidence taken in the Court below was read ([a]).

The *Joseph Ferens.*

The case of the steamship *Joseph Ferens*, a "missing ship," heard before the Wreck Commissioner and Assessors, at Newcastle, on the 19th February, 1880, was ordered by the Board of Trade to be re-heard on the application of the owners, on the ground that new and important evidence had been discovered which could not have been produced at the first hearing ([b]), and the finding complained of was that the vessel was overladen and that as laden she had insufficient stability. The re-hearing was ordered to take place at Newcastle-on-Tyne, before the Wreck Commissioner and Assessors. Four additional witnesses were produced and examined by the Board of Trade and the owners. In consequence of the further evidence adduced, the Court held after an exhaustive Inquiry, that the vessel was not overladen, the additional witnesses examined having thrown a totally new light upon the case. No costs were given on either side ([c]).

The *Stamford.*

The case of the *Stamford*, originally heard before two Justices and Assessors at Sunderland, was ordered by the Board of Trade to be re-heard, owing to the Court having in their report "recommended" the Board of Trade to suspend the certificate of the master for six months, instead of themselves exercising the power of suspension in conformity with section 23 of the Merchant Shipping Act Amendment Act, 1862 ([d]). The case was re-heard before the same tribunal, who, having again found that the vessel had been lost through the default of the master, adjudged that his certificate should be suspended for four monhts ([e]).

The *Acorn* and *William Hartmann.*

The case of the *Acorn* and *William Hartmann*

([a]) The *Cerwyn*, Report of Re-hearing dated 19th July, 1880.
([b]) The *Joseph Ferens*, Report dated 19th February, 1880.
([c]) *Ibid*, Report of Re-hearing dated 20th September, 1880.
([d]) The *Stamford*, Report dated 28th February, 1881.
([e]) *Ibid*, Report of Re-hearing dated 14th April, 1881.

The *Acorn* and *William Hartmann*.

was originally heard before the Stipendiary Magistrate at Cardiff and Assessors. The casualty inquired into was a collision between the two vessels, and the Court held that it was due to a negligent look-out on board the *William Hartmann*, a steamship, and that the mate was responsible and in default. They accordingly suspended his certificate for three months ([a]).

The Board of Trade, on the mate's application, ordered the case to be re-heard before the Wreck Commissioner and Assessors, and further evidence was adduced to show that the *Acorn* had not been seriously damaged by the collision. Upon the re-hearing the Court found that the mate of the *William Hartmann* was to blame for not keeping a good look-out, but ordered his certificate to be returned to him, as neither they nor the Court below had jurisdiction to deal with it, the *Acorn* not having been seriously damaged within the meaning of the Merchant Shipping Acts ([b]).

The *Scio*.

The case of the *Scio* was originally heard before two Justices of the Peace and Assessors at North Shields. The vessel was run ashore on the coast of Fifeshire to prevent her sinking, and the Court found that she was sent to sea in an unseaworthy condition, that the master and mate were in default, and that the owner was also in default. The Court accordingly suspended the master's certificate for three months; they censured the mate, and ordered the owner to pay £50 towards the costs of the Investigation ([c]).

The owner applied for a re-hearing, on the ground that new and important evidence as to the condition of the vessel could be produced.

The Board of Trade being of opinion that there was ground for suspecting a miscarriage of justice, ordered the case to be re-heard before Justices of the Peace at North Shields.

Upon the re-hearing the Justices confirmed the previous decision with respect to the master and mate, and found that the blame (if any) which might

([a]) The *Acorn* and *William Hartmann*, Report dated 25th June, 1881.

([b]) *Ibid*, Report of Re-hearing dated 11th August, 1881.

([c]) The *Scio*, Report dated 31st December, 1881.

The *Scio*.

be attached to the owner in executing the repairs done by him to the vessel would partake of the nature of an error in judgment, and they did not therefore confirm that part of the previous decision by which the owner had been ordered to pay £50 towards the costs of the Inquiry.

The Assessors while concurring in the decision of the Justices upon the re-hearing as regarded the master and mate, did not otherwise concur in the report. They stated their reasons for dissenting therefrom in a separate report to the Board of Trade, and therein held that the owner was to blame and in default for not using reasonable precautions to ascertain the condition of his vessel previous to her leaving port (a).

The *Escambia*.

In the case of the *Escambia*, a Formal Investigation was held before a Naval Court at San Francisco, consisting of the British consul and two masters of British ships as Nautical Assessors.

The vessel left San Francisco with a cargo of wheat, and in crossing the bar at the entrance to the bay she shipped some heavy seas in succession, filling the fore and after wells, which threw her over to port and ultimately caused her to fall over on her beam ends and founder, twenty-five of her crew being drowned.

The Naval Court found that the evidence as to the vessel's stability was somewhat conflicting; that she was not overloaded; that no blame attached to the master in connection with the loss of the ship; and that with the evidence before the Court they could come to no other conclusion than that the loss was due to a peril of the sea (b).

The Board of Trade upon considering the Report, were of opinion that inasmuch as there was no evidence before the Naval Court, as to the construction of the vessel, and the plans were not produced to them, it was obvious that the decision arrived at was based upon insufficient evidence, and was necessarily inaccurate and misleading.

The Board accordingly ordered the case to be re-heard before the Wreck Commissioner, and

(a) The *Scio*, Report of Re-hearing, dated 14th February, 1882.
(b) The *Escambia*, Report of Naval Court, dated 22nd of June, 1882.

the re-hearing took place at Westminster, the Assessors having special knowledge and experience in the construction of ships and the loading of cargoes of grain.

The *Escambia*

The Court found that the vessel, although in a good and efficient state as regarded her hull and machinery, and with her cargo properly stowed when she left San Francisco, was overladen, and had not sufficient stability, and that the water she took on deck in crossing the bar caused her to fall over on her beam ends, and at the same time the door at the after-part of the alley-way on the port-side being open the water passed through into the engine-room, and she filled and went down.

The Court also found that the master had committed a grave error of judgment in putting to sea with the vessel in the state in which she was, but they did not deal with his certificate ([a]).

The *Bertioga*.

In the case of the *Bertioga*, a sailing ship, stranded off the coast of Brazil, a Formal Investigation had been held before a Naval Court at Céara, in Brazil, consisting of the British vice-consul, a merchant, and two masters of British ships. They found that the vessel was not navigated with proper care; that the master did not attend to his duties at any time on the day of the wreck; and that the loss of the vessel was caused entirely by mismanagement on his part, and he was further found to have been the worse for liquor during the whole of the day of the casualty. The Naval Court did not, however, exercise their direct power of cancellation or suspension with respect to the master's certificate, but forwarded it to the Board of Trade to be dealt with by them.

The Court gave no decision as to the conduct of the chief mate ([b]).

The Board of Trade having no longer the power to deal with certificates ([c]), the proceedings of the Naval Court were altogether nugatory. The Board accordingly ordered the case to be re-heard.

([a]) The *Escambia*, Report of Re-hearing, dated 28th November, 1882.
([b]) The *Bertioga*, Report of Naval Court, dated 16th October, 1882.
([c]) See 25 & 26 Vict., c. 63, s. 23, sub-sec. 1, *ante*, page 60.

The *Bertioga*.

The second Inquiry took place before the Wreck Commissioner with two Assessors, when the Court confirmed in substance the finding of the Naval Court, and in addition they held that the chief mate was also to blame in respect of the navigation and management of the vessel. The Court accordingly cancelled the master's certificate, and suspended for six months the master's certificate held by the chief mate, with a recommendation that he should be granted a first mate's certificate in the meantime ([a]).

Appeals.

The *Arizona*.

There have been several appeals under the Act. The first was in the matter of the steamship *Arizona*, and in the judgment therein some important general principles were laid down by the Court of Appeal. It was an appeal to the Admiralty Division of the High Court by the master of the steamship *Arizona*, which had been seriously damaged through collision with an iceberg, against the decision of a Stipendiary Magistrate finding the master and second mate in default for not keeping an efficient look-out, and suspending their certificates for six months. It was held that the Court will, on an appeal, consider the evidence on which the judgment of the Court of Inquiry proceeded, and will reverse the judgment if the evidence is insufficient to justify the suspension of the certificate. The evidence must be such as to lead to the conclusion that the default of the officer was the cause of the casualty. It appeared that the look-out men had been so placed that they were able to efficiently perform their duty, that after they had sighted the iceberg for an appreciable time before the collision they did not report it as it was their duty to do, but consulted with one another, and informed the master of the danger too late to enable him to avoid the collision. The Court therefore held that the cause of the collision, if it was possible for them to have seen the iceberg sooner than they did, must be attributed to the fact that they did not keep a good look-out, or that they did not

Defective look-out.

([a]) The *Bertioga*, Report of Re-hearing, dated 3rd January, 1883.

give warning soon enough of that which afterwards turned out to be an iceberg, and came to the conclusion that the master did not, in those circumstances, cause or contribute to the casualty. The judgment was accordingly reversed(a).

The *Arizona*.

In a second case, an appeal was lodged against the decision of two Justices at Glasgow in an Investigation into the stranding of the steamship *Carfin*. It appeared that the vessel had left Glasgow, and after discharging the pilot off Greenock the master took charge and she proceeded down the river at full speed. The weather was hazy, but the shore lights and the land on either side were visible. At 3·56 a.m. she arrived abreast of the Cloch Light and was about half a mile distant from it. The chief officer informed the master that he could not get the second officer on deck to choose the watches, and the master without giving the chief officer any instructions as to the course, left the bridge for the purpose of calling the second officer. The master was absent from the bridge from four to five minutes, and in the meantime a beacon was reported, and a few moments after the vessel stranded on the Gantock Rock. The Court found the master in default; and for leaving the deck without sufficient justification at a time when the safety of the ship required his personal supervision, they suspended his certificate for six months. The appeal being necessarily brought in Scotland, was heard by the Second Division of the Court of Session, assisted by two nautical Assessors, and they confirmed the decision of the Court below with costs. There was no dispute in regard to the facts of the case, but in the conclusion to be drawn from them. The question simply was whether the act of the master in going below was in the circumstances justifiable, and the Court held that it was not (b).

The *Carfin*.

Leaving deck at a critical time.

Another appeal arose out of a collision in Dover Roads between the sailing ship *Mary* and the steamship *Rowland* (c) in April, 1881. The Formal Investigation was held before the Stipendiary

The *Mary* and *Rowland*.

(a) The *Arizona*, 5 Prob. Div. 123; 49 L.J. 54; 42 L.T. 405; 28 W.R. 704.
(b) *Ewer* v. *Board of Trade*, 7 Rettie, Sc. 835.
(c) The *Mary* and *Rowland*, unreported.

The *Mary* and *Rowland*.

Magistrate at Cardiff with Assessors. The report of the Court found that the collision was attributable to an inefficient look-out on board the steamship, for which the master of that vessel was in default, and for this default the Court suspended his certificate for three calendar months. It appeared from the annex to the report that no blame of any kind attached to the master of the *Mary*, or, with the above exception, to the master of the *Rowland;* and the case resolved itself into the single question of the efficiency of the look-out on board the latter vessel. Upon this point the report stated that there was no reason to doubt that a look-out man was properly placed on board the *Rowland*, and that the officers were in their proper places on the bridge, but that was not sufficient. In passing at night through a roadstead of that character it would only have been a reasonable precaution to have doubled the look-out on the forecastle, and to have seen that the men employed on that duty were continually on the alert. The Appeal was heard in the Court of Admiralty on the 11th July, 1881, before the President Sir James Hannen and Sir Robert Phillimore, with Assessors. The Court held that the master of the *Rowland*, having appointed a competent look-out man, and stationed him in a proper position, was not responsible for the collision caused by his neglect in having watched the burning of lights on his ship intended to attract a boat from shore to take off the pilot, instead of looking ahead, for the master could not have done anything more with regard to the look-out man than he did, namely, to see that the man was there, apparently doing his duty. The master's duty was on the bridge behind the look-out man, and it was impossible for him to be seeing in which direction the eyes of the look-out man were cast. As to the *ratio decidendi* of the Court below, that there ought to have been two look-out men, the Court of Appeal held that such was not the ordinary practice, and that although there might undoubtedly be circumstances in which a precaution of that kind would be prudent and proper, they did not exist in the present case. The decision of the Court below was therefore reversed, and the Court of Appeal further

Efficiency of look-out.

found in their report to the Board of Trade [a] that the master of the *Rowland* was not in default for any other neglect of duty leading to the loss of the *Mary* [b].

The *Mary* and *Rowland*.

In the case of the steamship *Kestrel* the master appealed against the decision of the Wreck Commissioner and two Assessors in a Formal Investigation held by them into the circumstances attending the stranding of the vessel on Burhou Island, west of Alderney. The decision was contained in the report of the Court, which found, for the reasons annexed thereto, that the stranding was due to negligent navigation by the master, in having set and steered a course from the *Royal Sovereign* light-ship, so as to pass too near to the Casquets, instead of keeping his vessel well out in mid-channel, and, that she having thus been brought within the range of the indraught of the Race of Alderney, was set by the current to the southward on to Burhou Island. For these wrongful acts and defaults the Court suspended the certificate of the master for three months. The reasons annexed to the report consisted of a full statement of the facts of the case, and specific answers returned by the Court of Inquiry to the questions put by the Board of Trade under General Rule 16 [c]. From these answers, and from the evidence in the case, the Court of Appeal came to the conclusion that the master of the vessel had continued to steer a course which, in ordinary conditions of weather, would have brought her within sight of the light on the Casquets, if approached during the night, or within sight of the rocks themselves, if approached by day, but that that course was persisted in at full speed during weather which ought to have led the master to alter it in the conditions then actually existing. The Court of Appeal accordingly held that although in clear weather it might have been right to steer upon that course, it was not right to continue upon it during fog; and further that, in that condition of weather, the vessel was being navigated at too great a speed, and that

The *Kestrel*.

Negligent navigation during foggy weather.

(a) See Shipping Casualties (Appeal and Re-hearing) Rules, 1880, Rule 6 (k.), page 209.
(b) The *Mary* and *Rowland*, unreported.
(c) See *ante*, page 119.

The *Kestrel.*

was a contributing cause to the disaster. The Court therefore held that the master was guilty of a wrongful act within the meaning of the report of the Court below, and they affirmed the decision of the Wreck Commissioner, adding, however, a recommendation to the Board of Trade to remit the remainder of the suspension of the certificate ([a]).

The *Golden Sea.*

Improper ballast.

The *Golden Sea*, a sailing vessel employed in the Trans-atlantic timber trade, sailed from Bristol for New Brunswick in ballast. She was leaky, but not to a degree unusual in vessels of her character; her ballast consisted partly of granite stones and partly of rubble, rubbish, and building refuse taken on board at Bristol, the latter being the kind of ballast usually taken in at this port, but better material could have been obtained at a rather higher price. She sailed on the 4th of October, 1881, and meeting with severe and stormy weather, and having, notwithstanding the efforts of the crew, made a large amount of water, her ballast shifted, she became unmanageable, and was abandoned, and lost. An Inquiry by the Wreck Commissioner was ordered, and he found that the ballast taken on board by the master was improper, and that the loss of the vessel was due to the ballast having been converted into mud by admixture with the water made during the voyage, and so choking the pumps that they could not be used, whereby the ship foundered. The Court found the master in default and suspended his certificate for three months. On an appeal by him, the Court being of opinion that the evidence before the Wreck Commissioner established that the master had authority from his owner to provide ballast for the vessel without restriction as to price, and had been aware of the character of the ballast which she had taken on board, and that the carrying of such ballast contributed to her loss, dismissed the appeal with costs ([b]).

The *Famenoth.*

In the case of the *Famenoth* ([c]), the Court of Appeal, reversing the decision of the Wreck Commissioner, held that an error of judgment on the part of the

([a]) The *Kestrel*, 6 Prob. Div. 182; 45 L.T. N.S. 111.
([b]) The *Golden Sea*, 7 Prob. Div. 194; 51 L.J. 64; 30 W.R. 842.
([c]) The *Famenoth*, 7 Prob. Div. 207.

The *Famenoth.*

master of a vessel at a moment of great difficulty and danger does not amount to a wrongful act or default within the meaning of the 242nd section of the Merchant Shipping Act, 1854, so as to justify the suspension or cancellation of the master's certificate. The *Famenoth* was stranded on the Pan Sand, off Whitstable, and four of her crew and a Trinity House pilot left her in a boat to transfer some of her passengers to one of three steam tugs in attendance. After the passengers were safely transferred the boat went adrift, and those in it were drowned. The stranding was due to the default of the pilot. The Wreck Commissioner held the master to blame for having kept the three steam tugs in attendance on the vessel instead of sending one of them off to the assistance of the men who had gone adrift in the boat, the vessel herself being in no immediate danger, whereas the men in the boat were in imminent risk of losing their lives. It appeared that when the boat was seen to be adrift, the master of the *Famenoth* signalled to the master of a tug to go after her which he did; but before he could reach the boat the tug herself touched the ground. The boat continued to drive through the breakers over the sand into the open water beyond. The tug finding she could not follow, returned, the master of the *Famenoth*, who had been engaged in putting his passengers into the lifeboat, asked the master of the tug why he had not gone to the gig, and he stated that he had gone as far as the draught of water would allow him, as the fact was. The tug was not prevented by the master of the *Famenoth* from going round the sand, but it did not occur to the master of the tug to do so, or, as he said, he would have done it. The appellant had no special knowledge of the sands and channels around him, and had no advice that it could be done, though by looking at the chart he might have discovered it. The Court of Appeal came to the conclusion that he did not recklessly detain the tug knowing that she could have usefully followed the gig, but that the appellant not knowing that she could have done so, employed her with the other two tugs in an endeavour to get his vessel off the sand. This was a proper course for him to take apart from the question of the pro-

Error of judgment in critical circumstances.

The *Famenoth.*

priety of his conduct with reference to the gig. The Court also held that the *Famenoth* was at the time in imminent peril and was shortly afterwards found to be filling fast. Afterwards, however, the vessel was got off. It was held that the utmost that could be said against the behaviour of the appellant was that it manifested an error of judgment at a moment of great difficulty and danger.

The *Largo Bay.*

The *Largo Bay* Inquiry is a case in which some account of the circumstances of the casualty may tend, in connection with the judgment of the Court of Appeal, to throw light upon the question what is a "wrongful act or default" within the meaning of section 242 of the Merchant Shipping Act, 1854.

The *Largo Bay* steamship, lying off Marbella in ballast, was brought up on the 7th December, 1882, in 9 fathoms, with her starboard anchor and 50 fathoms of cable. The master told the chief engineer to bank the fires on two successive days, and an anchor watch was set at night, consisting of an able seaman, to whom no instructions were given, and with this exception all hands turned in.

On the third morning, at 5.35 a.m., the weather was squally, with a strong swell from the southward. The able seaman called the chief officer, who came on deck, and finding the weather threatening, he called the master, reporting the weather, and asked if he should call the engineers to get up steam; the master told him to wait a little, as the weather would probably take off again. The mate called all hands, and in about ten or fifteen minutes, again called the master, when he received orders to raise steam; he told one of the engineers to get up steam at once and then went forward, when the master was on the bridge. Shortly afterwards the cable parted, and the engineer reported that there was insufficient steam to turn the engines. The port anchor was let go, but the vessel drifted broadside on to the beach and became a total wreck.

The case was heard before two Justices of the Peace and Assessors at North Shields, and they found that the casualty was caused by a heavy sea and gale from the S.S.E. to S.W., which resulted in the parting of the starboard cable, the vessel at the time not having sufficient steam to make headway;

that the master gave orders to the engineer as to banking the fires which, if properly attended to, ought to have enabled steam to be got up in a shorter time, but in the opinion of the Court, he ought to have cautioned him as to the well known danger of the roadstead; that being in an exposed roadstead, the master neglected to place a proper anchor watch with specific instructions as to reporting the weather; that he did not come on deck immediately on being called by the chief officer, and in the opinion of the Court, he ought either to have complied with the request of the chief officer to be allowed to give instructions to the engineer to get steam up, or to have satisfied himself at once of the state of the weather; that steam might have been obtained in much less time had the fires been properly banked and attended to from time to time; that the master should have shown greater alacrity in going on deck; that the port anchor was not in such a state of readiness as it ought to have been; and that the chief engineer was not justified in leaving the engine-room and stoke-hole without an engineer or fireman in charge.

In these circumstances the Court found the master and chief engineer in default, and suspended the certificate of the master for three months, and that of the chief engineer for a similar period, recommending however, if desired, the grant of a chief officer's certificate to the master, and a second engineer's certificate to the engineer during the periods of suspension.

Against this decision the master appealed on the following grounds *(inter alia)*, viz.:—

That the causes of the stranding as found by the Court were not attributable to any act or default of the master within the meaning of the Merchant Shipping Act, 1854, section 242:

That the admitted main cause of the stranding was the want of steam to enable the master to lift the anchor and stand out to sea, for which the master was in no way responsible:

That by the judgment and report of the Court, the orders given by the master to the chief engineer were sufficient if properly attended to, and it was not the duty of the master to explain the reason and urgency

The *Largo Bay*.

of his definite orders to a certificated chief engineer:

That the anchor watch set in fine settled weather was sufficient, and according to the usage of practice, and, if such watch was insufficient, that upon the evidence such deficiency did not cause, or in any way materially contribute to the casualty:

That the master came on deck with all reasonable dispatch when called by the chief officer, and that there was no proof of delay in calling the chief engineer, which would have contributed to the casualty.

The Appeal was heard before Sir James Hannen, the President of the Probate, Divorce, and Admiralty Division of the High Court, and Mr. Justice Butt. In giving judgment Sir James Hannen stated that according to his view of the question for determination, it was not merely whether the master of the *Largo Bay* had completely done his duty to the satisfaction of the Court, but whether the vessel was lost by any misconduct of his. With respect to the finding of the Court below that the master ought to have cautioned the engineer as to the well known danger of the roadstead, and dealing with that finding as a legal question, Sir James Hannen held that the accident was not occasioned by the captain not having given special directions to the engineer, or by not having questioned him as to whether or not his orders to bank the fires had been obeyed, and further that the finding that the anchor watch was insufficient could not be sustained. With respect to the finding that the captain showed a want of alacrity in not coming on deck immediately on being called by the chief officer, Sir James Hannen held that the delay of a few minutes, which was the only consequnce of his not having at once come on deck, was not the occasion of the accident. As to the finding that the port anchor was not in such a state of readiness as it ought to have been, the President held that the accident would not have been avertible by anything more that could have been done with reference to the port anchor.

Sufficiency of anchor watch.

Want of alacrity at a critical time.

The President accordingly held that the loss of the vessel was not occasioned by any wrongful act or default on the part of the master, and concluded his judgment in the following terms:—

"At the same time I feel very fully the force of

the observations which have been made by Mr. Danckwerts on the subject, that it will not do to encourage the idea that the safety of valuable property, and above all, valuable lives, is to be made to depend upon whether everybody in a chain of services has been discharging his duty, that something more lies upon the captain to be vigilant, or to use a very good expression which Mr. Danckwerts has made use of, that he should 'keep touch' with the full government of the ship, and we come to the conclusion, and are advised, that though the conduct of the captain in this matter has not been the cause of the loss of the vessel, yet that there was such a general laxity of discipline on board this ship, as not to throw credit upon the captain, and we consider that that should influence us to this extent, that while we relieve him from the stigma of having his certificate suspended, we do not think it is a case in which he should have costs.

The *Largo Bay*.

Necessity for general supervision of the master.

Laxity of discipline.

Costs.

Mr. Justice Butt said: "I entirely agree with the conclusion at which my Lord has arrived, and for the reasons which he has given in support of that conclusion. I do not doubt for a moment, that in some respects the conduct of this master was open to censure. It does not therefore follow that the facts are such as to justify the suspension of his certificate. I need not go into any detail in the matter, because I agree entirely with the reasons which have been given, and I think that a very good way of marking our sense of the laxity of discipline on board this ship, is to deal with the matter as my Lord has decided, and refuse the master the costs of this appeal."

The finding of the Court below was therefore reversed, but no order was made as to costs.

The rules which have been made under the Shipping Casualties Investigations Act, 1879, for regulating the procedure on appeals and at re-hearings are given in the next chapter.

CHAPTER XI.

RULES OF PROCEDURE ON APPEALS AND RE-HEARINGS.

The Merchant Shipping Act, 1876,
39 & 40 *Vict.*, *Cap.* 80.

The Shipping Casualties Investigations Act, 1879,
42 & 43 *Vict.*, *Cap.* 72.

RULE I.

Rule 1. Short Title.

These Rules may be cited as "The Shipping Casualties (Appeal and Rehearing) Rules, 1880."

RULE II.

Rule 2. Commencement.

These Rules shall come into operation on the 21st day of April, 1880.

RULE III.

Rule 3. Interpretation.

In the construction of these Rules the word "Judge" shall mean the Wreck Commissioner, Stipendiary Magistrate, Justices or other authority empowered to hold an Investigation into the conduct of a master, mate, or engineer, or into a shipping casualty.

RULE IV.

Rule 4. Publication of Rules.

These Rules shall be published by Her Majesty's Stationary Office, through its Agents, and a copy shall be kept at every Custom House and Mercantile Marine Office in the United Kingdom, and any person desiring to peruse them there shall be entitled to do so.

RULE V.

Rule 5. Copy of report to be given to any party where a certificate has been cancelled or suspended.

Where the certificate of a master, mate, or engineer has been cancelled or suspended, the Board of Trade shall, on application by any party to the proceedings, give him a copy of the report made to the Board.

The above report setsforth the decision of the Court below. See *ante*, p. 101.

RULE VI.

Rule 6. Appeals.

Every appeal under section two of "The Shipping Casualties Investigations Act, 1879," shall be subject to the conditions and regulations following, namely:—

Notice of appeal.

(*a*) The appellant shall, within seven days after the day on which the decision appealed against is pronounced, serve on such of the other parties to the proceedings as he may consider to be directly affected by the appeal, notice of his intention to appeal, and shall also, within two days after the appeal is set down, serve on the said parties notice of the general grounds of the appeal.

Notice of grounds of appeal.

The limit of seven days was no doubt suggested by the ordinary rule as to appeals from the decisions of Magistrates.

In such appeals the appellant is required to state the grounds of appeal, see 42 & 43 Vict., c. 49, s. 81, sub-sec (2).

As to the mode of service of notices or proceedings in an appeal or re-hearing, see sub-section (*j*), page 209.

Appellant other than the Board of Trade to give security for costs.

(*b*) If the appeal is brought by any party other than the Board of Trade, the appellant shall give such security, if any, by deposit of money or otherwise, for the costs to be occasioned by the appeal, as the judge from whose decision the appeal is brought, on application made to him for that purpose, may direct.

Security for costs is always required on appeals from Magistrates, see 42 & 43 Vict., c. 49, s. 81, sub-sec. (3).

In appeals from the High Court it is not required in the absence of special order, Rules of the Supreme Court, Order LVIII., 15.

Appellant to leave copy of notice of appeal with the Court of Appeal.

(*c*) The appellant shall, before the expiration of the time within which notice of appeal may be given, leave with the officer for the time being appointed for that purpose by the Court to which the appeal is brought (in these Rules referred to as the Court of Appeal), a copy of the notice of appeal, and the officer shall thereupon set down the appeal by entering it in the proper list.

Setting down appeal.

Court to sit with two or more Assessors being either

(*d*) The Court of Appeal shall be assisted by not less than two Assessors, to be selected, in the discretion of the Court, having regard to the nature of each case, from either or both of the following classes :—

1. Elder Brethren of the Trinity House, or
2. Selected from the list of Assessors of Formal Investigations.

1. Elder Brethren of the Trinity House.
2. Persons approved from time to time by the Secretary of State as Assessors for the purpose of Formal Investigations into shipping casualties, under section 30 of the "Merchant Shipping Act, 1876," and sub-section 1 of section 3 of the "Shipping Casualties Investigations Act, 1879."

The above sub-section applies also to re-hearings. See post, Rule VII., sub-sec. (*b*) page 210.

Court of Appeal to have power to add parties.

(*e*) The Court of Appeal may, if it thinks fit, order any other person or persons, body or bodies, other than the parties served with the notice of appeal, to be added as a party or parties to the proceedings for the purposes of the appeal, on such terms with respect to costs and otherwise as to the Court of Appeal seems meet.

The above sub-section applies also to re-hearings. See post, Rule VII., sub-section (*b*), page 210.

Objection to parties on appeal.

(*f*) Any party to the proceedings may object to the appearance on the appeal of any other party to the proceedings as unnecessary.

The above sub-section applies also to re-hearings. See post, Rule VII., sub-section (*b*), page 210.

Proof of evidence taken in the Court below

(*g*) The evidence taken before the Judge from whose decision the appeal is brought shall be proved before the Court of Appeal by a copy of the notes of the Judge, or of the shorthand writer, clerk, secre-

tary, or other person authorised by him to take down the evidence, or by such other materials as the Court of Appeal thinks expedient; and a copy of the evidence, and of the report to the Board of Trade containing the decision from which the appeal is brought, and of the notice of the general grounds of the appeal, shall be left with the officer for the time being appointed for that purpose by the Court of Appeal before the appeal comes on for hearing. For the purpose of this rule, copies of the notes of the evidence, and of the report, shall be supplied to the appellant, on request, by the Judge or other person having charge thereof, on payment of the usual charge for copying.

Copy evidence and report to be left with Court of Appeal before hearing,

to be supplied by Judge in Court below or other person having charge thereof on payment of copying charge.

The above sub-section applies also to re-hearings. See post, Rule VII., sub-sec. (*b*), page 210.

Upon an appeal the Court will consider the evidence upon which the judgment of the Court below was based. The *Arizona*, L.R. 5 P.D., page 128.

The Court of Appeal has refused to order that a copy of the shorthand writer's notes of the judgment of the Court below be delivered to the appellant. It has also held that the Court below is not bound by the reasons orally given when judgment is delivered, but may assign different reasons in its report to the Board of Trade, and that the Appellate Court will decide the case upon the evidence with such assistance as the report may afford. The *Kestrel*, 6 Prob. Div. 188; 45 L.T. N.S. 111.

(*h*) The Court of Appeal shall have full power to receive further evidence on questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an Examiner or Commissioner. Evidence may also be given with special leave of the Court of Appeal as to matters which have occurred since the date of the decision from which the appeal is brought.

Further evidence may be given either orally or by affidavit or deposition.

By special leave as to new matter.

Upon an appeal to the Court of Admiralty against the suspension of a master's certificate for setting and steering a particular course the appellants sought to call as additional witnesses, ships' captains of great experience in similar voyages, to prove that the practice invariably was to set the same course as the master had set in the case under appeal, and further to give scientific evidence as to the effect on the current in the locality of the prevalence of particular winds.

Appeals and re-hearings. Rule 6, Notes on.

Expert evidence.

The Court of Appeal held that in conformity with the practice of the Court of Admiralty the evidence in question could not be received, that it would lead to the greatest possible inconvenience, and would lengthen trials enormously, and that it was unnecessary, because the Court were assisted by Assessors who were in fact skilled experts capable of giving their judgment upon the matters sought to be established by the proposed witnesses. (The *Kestrel*, L.R. 6 Prob. Div. 182; 45 L.T. N.S. 111). The same principle was enunciated in another case and acted upon. The *Mary* and *Rowland*, unreported.

It will be observed that under the above Rule the Court of Appeal has power to receive further evidence only on questions of fact, or to matters which have occurred since the date of the decision in the Court below. There is no provision for the reception of the evidence of experts, and this of itself might furnish a sufficient answer to an application for permission to produce such evidence.

The above sub-section applies also to re-hearings. See post, Rule VII, sub-sec. (*b*), page 210.

Power to order costs.

(*i*) The Court of Appeal shall have power to make such order as to the whole or any part of the costs of, and occasioned by the appeal as may seem just.

The above sub-section applies also to re-hearings. See post, Rule VII., sub-sec. (*b*), page 210.

The following rule has been laid down on this subject :—

Where the action of the Court below in suspending the certificate proceeds on the invitation of the Board of Trade, the Court ought, where it is of opinion that the certificate has been improperly suspended, to give costs to the successful appellant, unless it should be of opinion that he has been guilty of such misconduct as rendered an Inquiry as to the suspension of the certificate reasonable. Where the appeal is unsuccessful, the appellant will as a rule be condemned in costs. The *Arizona*, L.R. 5 Prob. Div. 128. Notwithstanding this rule, in a case where an owner's appeal was dismissed on the ground of want of jurisdiction, no costs were ordered to be paid by either party. The *Golden Sea*, 7 Prob. Div. 194. The Board of Trade have been condemned to pay costs to a successful appellant in two cases. The *Mary* and *Rowland*, unreported. The *Famenoth*, 7. Prob. Div. 207. In a case where the appellant was unsuccessful but the Board was recommended to shorten the period of suspension, each party was ordered to bear his own costs. The *Kestrel*, 6 Prob. Div. 182. The Board of Trade has received costs from an unsuccessful appellant. The *Golden Sea*, 7 Prov. Div. 194.

(*j*) Subject to the foregoing provisions of this Rule, every appeal shall be conducted under and in accordance with the general rules and regulations applicable to ordinary proceedings before the Court of Appeal to which it is brought, but there shall not be anything in the nature of pleadings, other than the notice of the general grounds of the appeal, except by special permission of the Court of Appeal.

Subject to the above Rules procedure to be the ordinary procedure of the Court of Appeal, but without pleadings, except by special leave.

The above sub-section applies also to re-hearings. See post, Rule VII., sub-sec. (*b*), page 210.

(*k*) On the conclusion of an appeal, the Court of Appeal shall send to the Board of Trade a report of the case, similar to that required to be sent by the Judge from whose decision the appeal is brought ([a]).

Report by Court of Appeal.

The above sub-section applies also to re-hearings. See post, Rule VII., sub-sec. (*b*), page 210.

RULE VII.

Rule VII. Re-hearings by order of Board of Trade.

Notice of a re-hearing to be given by the Board of Trade.

7. (*a*) Where the Board of Trade direct a re-hearing under section 2 of the "Shipping Casualties Investigations Act, 1879," they shall cause such reasonable notice to be given to the parties whom they consider to be affected by the re-hearing as the circumstances of the case may, in the opinion of the Board of Trade, permit.

With reference to the provision in section 28, sub-section 6, of the Merchant Shipping Act Amendment Act, 1862 ([b]), that no certificate shall be cancelled or suspended under that section, unless a copy of the report or a statement of the case upon which the Investigation is ordered has been furnished to the owner of the certificate before the commencement of the Investigation, the question arises whether it is necessary, for the purpose of a re-hearing, again to serve a copy of the report or statement of the case upon a master, mate, or engineer who has been already furnished with it before the Investigation in the Court below. As to this it is to be observed that neither the Shipping Casualties Investigations Act, 1879, nor the rules thereunder, require, in terms, that the owner of a certificate shall be furnished with the old, or a new report, or statement of the case, before a re-hearing, as a condition precedent to the exercise of the Court's power to deal with

([a]) See *ante*, page 101.
([b]) See *ante*, page 60.

Sub-sections which apply to re-hearings as well as to appeals.

such certificate. If, however, upon a re-hearing, it is intended to bring forward new and important evidence, it would be fair to give notice to the owner of the certificate of the purport or effect of such evidence.

(*b*) The provisions distinguished as (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), and (*k*) of the last foregoing Rule shall apply to a re-hearing as if it were an appeal, and as if the Court or authority before whom the re-hearing takes place were the Court of Appeal ([a]).

([a]) The above Rules are dated 17 April, 1880.

APPENDIX.

GENERAL RULES (a)

FOR

FORMAL INVESTIGATIONS INTO SHIPPING CASUALTIES, 1878.

WHEREAS by the Merchant Shipping Act, 1876, it is provided that the Lord High Chancellor of Great Britain may from time to time make, and when made revoke, alter, and add to, general rules for carrying into effect the enactments relating to formal investigations into shipping casualties:—

Now, therefore, I, the Right Honourable Hugh MacCalmont, Baron Cairns, Lord High Chancellor of Great Britain, do order as follows:

Short Title.

1. These Rules may be cited as "The Shipping Casualties Rules, 1878."

Commencement.

2. These Rules shall come into operation on the 1st day of October, 1878.

Interpretation.

3. In the construction of these Rules the word "Judge" shall mean the Wreck Commissioner, Stipendiary Magistrate, Justices, or other authority empowered to hold a formal investigation into a shipping casualty.

Publication of Rules.

4. These Rules shall be published by Her Majesty's Stationery Office through its agents, and a copy shall be kept at every Custom House and Mercantile Marine Office in the United Kingdom, and any person desiring to peruse them there shall be entitled to do so.

Notice of Investigation.

5. When a formal investigation into a shipping casualty has been ordered, the Board of Trade may cause a notice, to be called a

(a) See Notes on General Rules, chapter v., page 106.

Notice of Investigation, to be served upon the owner, master, and officers of the ship, as well as upon any person who may appear to have in any way contributed to the casualty. Form of the Notice of Investigation will be found in the Appendix No. 1.

Parties.

6. The Board of Trade, and any certificated officer upon whom a Notice of Investigation has been served, shall be deemed to be parties to the proceedings.

7. Any other person upon whom a Notice of Investigation has been served, and any person who shows that he has an interest in the investigation, shall have a right to appear, and shall thereupon become a party to the proceedings.

8. Any other person may, by permission of the Judge, appear, and shall thereupon become a party to the proceedings.

Notice to produce.

9. A party may give to any other party notice in writing to produce any documents (saving all just exceptions) relating to the matters in difference between them, and which are in the possession or under the control of such other party; and if the notice is not complied with, secondary evidence of the contents of the documents may be given by the party who gave the notice.

Notice to admit.

10. A party may give to any other party notice in writing to admit any documents (saving all just exceptions); and in case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all the costs of proving the documents, whatever may be the result, unless the Court is of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice has, in the opinion of officer by whom the costs are taxed, been a saving of expense.

Witnesses.

11. The Wreck Commissioner may issue subpœnas for the attendance of witnesses either before himself or before any other Judge, and such subpœnas shall be as nearly as possible in the form used in the High Court of Justice, and may be served and shall have effect in any part of the United Kingdom.

Affidavits.

12. Affidavits may, by permission of the Judge, be used as evidence at the hearing, when sworn to in any of the following ways, viz.:—

In the United Kingdom, before the Judge, or before a person authorised to administer oaths in the Supreme Court of

Judicature, or before a Stipendiary Magistrate, or before a Justice of the Peace for the county or place where it is sworn or made.

In any place in the British dominions out of the United Kingdom, before any Court, Judge, or Justice of the Peace, or any person authorised to administer oaths in any Court in that place.

In any place out of the British dominions, before a British Minister, Consul, Vice-Consul, or Notary Public, or before a Judge or Magistrate, whose signature is authenticated by the official seal of the Court to which such Judge or Magistrate is attached.

Proceedings in Court.

13. At the time and place appointed for holding the investigation, the Court may proceed to hear and adjudicate upon the case, whether the parties, upon whom a Notice of Investigation has been served, or any of them, are present or not.

14. The Board of Trade shall first produce any witnesses whom they may wish to examine, and who can give material evidence in regard to the casualty, whether they were or were not on board the ship at the time.

15. The witnesses shall be cross-examined by the parties in such order as the Judge may direct, and may be re-examined by the Board of Trade.

16. On the completion of their examination, the Board of Trade shall state in open Court upon what questions in reference to the causes of the casualty, and the conduct of any persons connected therewith, they desire the opinion of the Court, and if any person whose conduct is in question is a certificated officer, they shall also state in open Court whether in their opinion his certificate should be dealt with.

17. The Board of Trade and any other party may thereupon produce further witnesses, who shall be examined, cross-examined, and re-examined in such order as the Judge may direct.

18. When the whole of the evidence is concluded, the parties shall be heard in such order as the Judge may direct, and the Board of Trade shall be heard in reply.

19. The Judge may adjourn the Court from time to time and from place to place, as he may think fit.

20. Except when the certificate of an officer is cancelled or suspended in which case the decision shall always be given in open Court, the Judge may deliver the decision of the Court either *viva voce* or in writing; and, if in writing, it may be sent or delivered to the respective parties, and it shall not be necessary to hold a Court merely for the purpose of giving the decision.

21. The Judge may, if he thinks fit, order the costs and expenses of the proceedings, or any part thereof, to be paid by either the Board of Trade, or by any other party to the proceedings. Form of Order for payment of costs will be found in the Appendix, No. 2.

22. At the conclusion of the case the Judge shall report to the Board of Trade. Form of the Report will be found in the Appendix, No. 3.

Computation of Time.

23. In computing the number of days within which any act is to be done, they shall be reckoned exclusive of the first day and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or on a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusive of that day also.

Service of Notices, &c.

24. Any notice, summons, or other document issuing out of the Court may be served by post.

25. The service of any notice, summons, or other document may be proved by the oath or affidavit of the person by whom it was served.

Repealing Clause.

26. The Shipping Casualties Rules, 1876, except as to the cases in which an Order for a Formal Investigation shall have been made previous to the 1st day of October, 1878, are hereby revoked.

Dated this 28th day of July, 1878.

CAIRNS,
C.

APPENDIX.

The following forms shall be used, as far as possible, with such alterations as circumstances may require, but no deviation from the prescribed forms shall invalidate the proceedings, unless the Judge shall be of opinion that the deviation was material.

No. 1.—*Notice of Investigation.*

To Master, Mate, Engineer, Owner, &c., of or belonging to the ship of .

I hereby give you notice that the Board of Trade have ordered a formal investigation to be held into the circumstances attending the , and that subjoined hereto is a copy of

the report [*or* statement of the case], upon which the said investigation has been ordered. I further give you notice to produce to the Court [your Board of Trade Certificate, the Log Books of the vessel, and] any [other] documents relevant to this case which may be in your possession.

Dated this day of 18 .

Solicitor, Board of Trade.

Copy report (or statement of case).

No. 2.—*Order on a party for Payment of Costs of Investigation.*

In the matter of a formal investigation held at on the (*here state all the days on which the Court sat*) days of before assisted by into the circumstances attending the

The Court, orders—

(1.) that *A.B.* of do pay to the Solicitor to the Board of Trade [the sum of pounds on account of] the expenses of this investigation.

or (2) that the Board of Trade do pay to *A.B.* of [the sum of pounds on account of] the expenses of this investigation. Given under my hand this day of 18 .

Judge.

No. 3.—*Report of Court.*

In the matter of a formal investigation held at on the (*here state all the days on which the Court sat*) days of before assisted by into the circumstances attending the .

The Court, having carefully inquired into the circumstances attending the above-mentioned shipping casualty, finds, for the reasons stated in the Annex hereto, that the (*here state finding of the Court*).

Dated this day of 18 .

Judge.

We [*or* I] concur in the above report,

Assessor.

Assessor.

Annex to the Report.

(here state fully the circumstances of the case, the opinion of the Court touching the causes of the casualty, and the conduct of any persons implicated therein, and whether the certificate of any officer is to be either suspended or cancelled, and if so for what reasons.)

ADDITIONAL RULES (*)

AS TO

INVESTIGATIONS INTO SHIPPING CASUALTIES, 1879.

THE MERCHANT SHIPPING ACT, 1876, 39 & 40 VICT., CAP. 80.
THE SHIPPING CASUALTIES INVESTIGATIONS ACT, 1879, 42 & 43 VICT., CAP. 72.

39 & 40 Vict., c. 80, s. 30.

WHEREAS by section 30 of the Merchant Shipping Act, 1876, it was provided as follows:—

"The Wreck Commissioner, Justices, or other authority holding a formal investigation into a shipping casualty shall hold the same with the assistance of an Assessor or Assessors of nautical engineering or other special skill or knowledge, to be appointed by the Commissioner, Justices, or authority out of a list of persons for the time being approved for the purpose by a Secretary of State."

"The Commissioner, Justices, or authority, when of opinion that the investigation is likely to involve the cancellation or suspension of the Certificate of a Master or Mate, shall, where practicable, appoint a person having experience in the Merchant Service to be one of the Assessors."

42 & 43 Vict., c. 72, s. 3 (1).

And whereas by section 3, sub-section 1, of the Shipping Casualties Investigations Act, 1879, it was thus enacted:—

3. (1.) The list of persons approved as Assessors for the purpose of formal investigations into shipping casualties shall be in force for three years only, but persons entered in any such list may be approved for any subsequent list. The list of those persons in force at the passing of this Act shall continue in force until the end of the year one thousand eight hundred and eighty, but nothing in this section shall affect the power of the Secretary of State to withdraw his approval of any name on any such list or to approve of any additional name.

And whereas the Secretary of State has directed that the Assessors shall, so far as in his opinion circumstances permit, be taken in order of rotation within each class or sub-class, and has further directed that the Assessors placed by him on the list of Assessors on and after the 31st of March next shall be classified according to their qualifications, as follows:—

(*) See page 47 *et seq.*

QUALIFICATIONS.

Classes.

Class I.—Mercantile Marine Masters.

(*a.*) Five years' service as a Master in the Merchant Service of which two years must have been service in command of a sailing ship, with a Certificate of Competency.

(*b.*) Five years' service as a Master in the Merchant Service, of which two years must have been service in command of a steamship, with a Certificate of Competency.

Class II.—Mercantile Marine Engineers.

Five years' service as an Engineer in the Merchant Service, with a first class Certificate of Competency.

Class III.—Royal Navy.

Rank of Admiral or Captain and three years' service in command of one of Her Majesty's ships at sea, or rank of Staff Commander and three years' service in that rank in one of Her Majesty's ships at sea.

Class IV.—Persons of Nautical Engineering or other special Skill or Knowledge.

(*a.*) Such qualification as is in the opinion of the Secretary of State requisite for ordinary cases.

(*b.*) Such qualification as is in the opinion of the Secretary of State requisite for special cases.

42 & 43 Vict., c. 72, sec. 3 (2, 3).

And whereas it was further provided by section 3, sub-sections 2 and 3, of the same Act, as follows :—

(2.) The Assessor or Assessors for each such investigation shall, instead of being appointed by the Commissioner, Justices, or other authority holding the investigation, be appointed in such manner and according to such regulations as may be from time to time prescribed by general rules made under section 30 of the Merchant Shipping Act, 1876.

(3.) Where any such investigation involves, or appears likely to involve, any question as to the cancelling or suspension of the Certificate of a Master, Mate, or Engineer, it shall be held with the assistance of not less than two Assessors having experience in the Merchant Service.

Now, under the authority of the above-mentioned Acts, I, the Right Honourable Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, hereby make the following General Rules :—

Short Title.

1. These Rules may be cited as "The Shipping Casualties Rules, 1879."

Commencement.

2. These Rules shall, subject as hereinafter-mentioned, come into operation on the 24th day of December, 1879.

Publication of Rules.

3. These Rules shall be published by Her Majesty's Stationery Office through its agents, and a copy shall be kept at every Custom House and Mercantile Marine Office in the United Kingdom, and any person desiring to peruse them there shall be entitled to do so.

Appointment of Assessors.

4. The power of appointing Assessors for investigations into shipping casualties shall be vested in the Secretary of State.

5. If any investigation involves, or appears likely to involve, the cancelling or suspension of the Certificate of a Master, Mate, or Engineer, then in order to satisfy the aforesaid statutory requirement of not less than two Assessors having experience in the Merchant Service, there shall be appointed from the list not less than two Assessors from Class I. and Class II., or from either of those classes.

6. Subject to any special appointment or appointments which the Secretary of State may think it expedient to make in any case where special circumstances appear to him to require a departure from these Rules (the requirements of Rule 5 being always complied with), Assessors shall be appointed as follows :—

(1.) Where the investigation involves, or appears likely to involve, the cancelling or suspension of the Certificate of a Master or Mate, but not of an Engineer, at least two Assessors shall be appointed from Class I.

(2.) Where the investigation involves, or appears likely to involve, the cancelling or suspension of the Certificate of a Master or Mate of a sailing ship, one at least of the Assessors shall be appointed from sub-section (*a*) of Class I., and where the investigation involves, or appears likely to involve, the cancelling or suspension of the Certificate of a Master or Mate of a steamship one at least of the Assessors shall be appointed from sub-section (*b*) of Class I.

(3.) Where the investigation involves, or appears likely to involve, the cancelling or suspension of the Certificate of an Engineer one at least of the Assessors shall be appointed from Class II.

7. The Board of Trade shall inform the Secretary of State when Assessors are required, and shall state from which of the aforesaid classes Assessors ought, in their opinion, to be appointed, in order to give due effect to the aforesaid classification and these Rules; but the Board of Trade shall not request the appointment of any individual Assessor.

8. An appointment made by the Secretary of State of any Assessor or Assessors for an investigation shall be open to question on the ground that it was not in accordance with these Rules, or does not give full effect to the requirements of these Rules.

9. Whereas it is necessary to make temporary provision for the appointment of Assessors until the classification referred to in these Rules can be effected; therefore Rules 5 to 7 (both inclusive) shall not come into operation until the 31st of March, 1880, and until those Rules come into operation the statutory requirements as to the appointment in certain cases of two Assessors having experience in the Merchant Service shall be deemed to be complied with by the appointment of persons who, in the existing list, appear as qualified by service in the Mercantile Navy.

Dated this 20th day of December, 1879.

CAIRNS.
C.

ADDITIONAL RULES (*)

AS TO

INVESTIGATIONS INTO SHIPPING CASUALTIES, 1880.

THE MERCHANT SHIPPING ACT, 1876, 39 & 40 VICT., CAP. 80.
THE SHIPPING CASUALTIES INVESTIGATIONS ACT, 1879, 42 AND 43 VICT., CAP. 72.

39 & 40 Vict., c. 80, s. 30.

WHEREAS by section 30 of the Merchant Shipping Act, 1876, it was provided as follows:—

"The Wreck Commissioner, Justices, or other authority holding a formal investigation into a shipping casualty shall hold the same with the assistance of an Assessor or Assessors of nautical engineering or other special skill or knowledge, to be appointed by the Commissioner, Justices, or authority out of a list of persons for the time being approved for the purpose by a Secretary of State."

"The Commissioner, Justices, or authority, when of opinion that the investigation is likely to involve the cancellation or suspension of the Certificate of a Master or Mate, shall, where practicable, appoint a person having experience in the Merchant Service to be one of the Assessors."

(*) See page 52.

42 & 43 Vict., c. 72, s. 3 (1).

And whereas by section 3, sub-section 1 of the Shipping Casualties Investigations Act, 1879, it was thus enacted :—

3. (1.) The list of persons approved as Assessors for the purpose of formal investigation into shipping casualties shall be in force for three years only, but persons entered in any such list may be approved for any subsequent list. The list of those persons in force at the passing of this Act shall continue in force until the end of the year one thousand eight hundred and eighty, but nothing in this section shall affect the power of the Secretary of State to withdraw his approval of any name on any such list or to approve of any additional name.

And whereas the Secretary of State has directed that the Assessors shall, so far as in his opinion circumstances permit, be taken in order of rotation within each class or sub-class, and has further directed that the Assessors placed by him on the list of Assessors shall be classified according to the qualifications set forth in the "Additional Rules as to Investigations into Shipping Casualties," dated the 20th day of December, 1879.

And whereas the Secretary of State has further directed that the following qualifications with respect to Class II. Mercantile Marine Engineers shall be substituted for the qualifications set forth in the said rules, viz. :—

QUALIFICATIONS.

Classes.

Class II.—Mercantile Marine Engineers.

Five years' service as an Engineer in the Merchant Service, and at the time of appointment holding a first-class Certificate of Competency as an Engineer.

Now under the authority of the above-mentioned Acts, I, the Right Honourable Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, hereby make the following General Rules :—

Commencement.

1. These Rules shall come into operation on the 19th day of April, 1880.

Publication of Rules.

2. These Rules shall be published by Her Majesty's Stationery Office through its agents, and a copy shall be kept at every Custom House and Mercantile Marine Office in the United Kingdom, and any person desiring to peruse them there shall be entitled to do so.

3. The Shipping Casualties Rules, 1879, shall be read and construed and shall take effect as if the qualifications above set forth

with respect to Class II. Mercantile Marine Engineers had been inserted in the said Rules in lieu of the qualifications therein specified.

Dated this 19th day of April, 1880.

CAIRNS.
C.

ADDITIONAL RULES (a).

(APPEALS AND REHEARINGS) (b)

AS TO

INVESTIGATIONS INTO SHIPPING CASUALTIES, 1880.

THE MERCHANT SHIPPING ACT, 1876, 39 & 40 VICT., CAP. 80.

THE SHIPPING CASUALTIES INVESTIGATIONS ACT, 1879, 42 & 43 VICT., CAP. 72.

UNDER the authority of the above-mentioned Acts, I, the Right Honourable Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, hereby make the following General Rules:—

Short Title.

1. These Rules may be cited as "The Shipping Casualties (Appeal and Rehearing) Rules, 1880."

Commencement.

2. These Rules shall come into operation on the 21st day of April, 1880.

Interpretation.

3. In the construction of these Rules the word "Judge" shall mean the Wreck Commissioner, Stipendiary Magistrate, Justices or other authority empowered to hold an investigation into the conduct of a master, mate, or engineer, or into a shipping casualty.

Publication of Rules.

4. These Rules shall be published by Her Majesty's Stationery Office, through its agents, and a copy shall be kept at every Custom House and Mercantile Marine Office in the United Kingdom, and any person desiring to peruse them there shall be entitled to do so.

(a) See Notes on these Rules, chapter xi., page 204.
(b) See chapter x., Rehearing and Appeal, page 180.

Copy of Report where Certificate affected.

5. Where the Certificate of a Master, Mate, or Engineer has been cancelled or suspended, the Board of Trade shall, on application by any party to the proceedings, give him a copy of the report made to the Board.

Appeals.

6. Every appeal under section 2 of "The Shipping Casualties Investigations Act, 1879," shall be subject to the conditions and regulations following, namely:—

(*a.*) The appellant shall, within seven days after the day on which the decision appealed against is pronounced, serve on such of the other parties to the proceedings as he may consider to be directly affected by the appeal, notice of his intention to appeal, and shall also, within two days after the appeal is set down, serve on the said parties notice of the general grounds of the appeal.

(*b.*) If the appeal is brought by any party other than the Board of Trade, the appellant shall give such security, if any, by deposit of money or otherwise, for the costs to be occasioned by the appeal, as the Judge from whose decision the appeal is brought, on application made to him for that purpose, may direct.

(*c.*) The appellant shall, before the expiration of the time within which notice of appeal may be given, leave with the officer for the time being appointed for that purpose by the Court to which the appeal is brought (in these Rules referred to as the Court of Appeal) a copy of the notice of appeal, and the officer shall thereupon set down the appeal by entering it in the proper list.

(*d.*) The Court of Appeal shall be assisted by not less than two Assessors, to be selected, in the discretion of the Court, having regard to the nature of each case, from either or both of the following classes:—

1. Elder Brethren of the Trinity House.
2. Persons approved from time to time by the Secretary of State as Assessors for the purpose of formal investigations into shipping casualties under section 30 of the "Merchant Shipping Act, 1876," and sub-section 1 of section 3 of the "Shipping Casualties Investigations Act, 1879."

(*e.*) The Court of Appeal may, if it thinks fit, order any other person or persons, body or bodies, other than the parties served with the notice of appeal, to be added as a party or parties to the proceedings for the purposes of the appeal, on such terms with respect to costs and otherwise as to the Court of Appeal seems meet.

(*f.*) Any party to the proceedings may object to the appearance on the appeal of any other party to the proceedings as unnecessary.

(*g.*) The evidence taken before the Judge from whose decision the appeal is brought shall be proved before the Court of Appeal by a copy of the notes of the Judge or of the shorthand writer, clerk, secretary, or other person authorised by him to take down the evidence, or by such other materials as the Court of Appeal thinks expedient; and a copy of the evidence, and of the report to the Board of Trade containing the decision from which the appeal is brought, and of the notice of the general grounds of the appeal, shall be left with the officer for the time being appointed for that purpose by the Court of Appeal before the appeal comes on for hearing. For the purpose of this rule, copies of the notes of the evidence, and of the report, shall be supplied to the appellant, on request, by the Judge or other person having charge thereof, on payment of the usual charge for copying.

(*h.*) The Court of Appeal shall have full power to receive further evidence on questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Evidence may also be given with special leave of the Court of Appeal as to matters which have occurred since the date of the decision from which the appeal is brought.

(*i.*) The Court of Appeal shall have power to make such order as to the whole or any part of the costs of and occasioned by the appeal as may seem just.

(*j.*) Subject to the foregoing provisions of this Rule, every appeal shall be conducted under and in accordance with the general rules and regulations applicable to ordinary proceedings before the Court of Appeal to which it is brought; but there shall not be anything in the nature of pleadings, other than the notice of the general grounds of the appeal, except by special permission of the Court of Appeal.

(*k.*) On the conclusion of an appeal, the Court of Appeal shall send to the Board of Trade a report of the case, similar to that required to be sent by the Judge from whose decision the appeal is brought.

Rehearings by Order of Board of Trade.

7. (*a.*) Where the Board of Trade direct a rehearing under section 2 of the "Shipping Casualties Investigations Act, 1879," they shall cause such reasonable notice to be given to the parties whom they consider to be affected by the rehearing

as the circumstances of the case may, in the opinion of the Board of Trade, permit.

(b.) The provisions distinguished as (d), (e), (f), (g), (h), (i), (j), and (k) of the last foregoing Rule shall apply to a rehearing as if it were an appeal, and as if the Court or authority before whom the rehearing takes place were the Court of Appeal.

Dated this 17th day of April, 1880.

CAIRNS,
C.

ADDITIONAL RULE

AS TO

INVESTIGATIONS INTO SHIPPING CASUALTIES, 1880.

THE MERCHANT SHIPPING ACT, 1876, 39 & 40 VICT., CAP. 80.

THE SHIPPING CASUALTIES INVESTIGATIONS ACT, 1879, 42 & 43 VICT., CAP. 72.

WHEREAS the Secretary of State has directed that such of the Assessors as were on the list immediately before the 31st March last, but were omitted from the new list then made as not complying with the technical qualifications required for the various classes into which the Assessors were thenceforward to be classified, should be replaced on the list in such class or classes respectively as upon consideration of their practical experience he has deemed appropriate.

Now, under the authority of the above-mentioned Acts, I, the Right Honourable Roundell Baron Selborne, Lord High Chancellor of Great Britain, hereby make the following Rule, viz.:—

That for the purposes of the Rules of 20th December, 1879, and 19th April, 1880, made under the above-mentioned Acts, the said Assessors shall be deemed respectively to belong to the classes in which they have been placed as aforesaid by the Secretary of State.

Approved, October 30th, 1880.

(Signed) SELBORNE.

ROYAL COMMISSION ON UNSEAWORTHY SHIPS, 1873 (a).

PRELIMINARY REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

WE, Your Majesty's Commissioners appointed to inquire into the alleged unseaworthiness of British registered ships, humbly beg leave to present to Your Majesty the following preliminary Report:—

An inquiry, which has for its object the amendment of the laws relating to merchant shipping, with the view of diminishing the perils of a seafaring life, ranges over a variety of subjects affecting the interests of the whole trading community. It touches, moreover, many delicate questions of colonial and of international policy.

We are not, therefore, at the present time prepared to submit to Your Majesty a complete and final report on the several matters referred to us.

We have, however, examined many witnesses and collected much information. This will, we believe, be useful in showing the difficulties by which the inquiry is surrounded, and in preparing the way for such legislative measures as may hereafter be deemed necessary.

The great object which we have kept in view is the preservation of life at sea. In pursuing this the chief object of our inquiry we deem it important to interfere as little as possible, with the freedom of British enterprise, with the inventive genius of the British shipbuilder, and with the property of shipowners, who are striving in active competition with other energetic mercantile communities.

According to the last annual statement compiled by the Registrar-General of Shipping and Seamen, the total number of registered vessels belonging to the British empire is 36,804, with a tonnage of 7,213,829 tons. The number of the crews cannot be accurately ascertained, but it is estimated from the returns obtained to amount to 329,000 men.

Every British sea-going ship must be registered, and the Certificate of Registry must be produced before the ship can proceed to sea. The Certificate of Registry contains the tonnage of the ship, the place at which and the year in which she was built, together with other particulars for the purpose of identification. It is no warrant of proper construction or of seaworthiness.

(a) See Introduction, page 23 *et seq.*

The amount of shipping or of tonnage does not give, it is said, an accurate notion of the amount of trade, because with the employment of steamers a greater number of voyages may be made with fewer vessels.

In reference to the loss of life at sea, Mr. Farrer, Secretary to the Board of Trade, observes, it is not satisfactory by way of comparison to say so many lives were lost 20 years ago and so many are lost now, unless you can show out of what proportion of voyages and out of what proportion of persons afloat these losses have occurred.

From the annual reports of wrecks it appears that there is a large loss of life at sea, but it is only by a careful analysis of these reports that any trustworthy opinion can be formed of the causes to which this loss should be ascribed.

* * * * * *

INQUIRIES BY THE BOARD OF TRADE.

Whenever a wreck occurs on the coasts of the United Kingdom, a report with depositions taken on the spot is transmitted to the Board of Trade. These reports are examined by two officers of the department, one of whom has been selected from the navy, and one from the merchant service. If the case appears to deserve further investigation the Board of Trade order an inquiry.

Under the Merchant Shipping Act of 1854 the Board of Trade have power to inquire into the circumstances connected with wrecks not only on our own coasts but also elsewhere, if any competent witnesses arrive or are found at any place in the United Kingdom. The system for the protection of wrecked property has been gradually improved, the returns of wrecks and of casualties have been, it is said, rendered more complete, and treaties upon this subject have been made with foreign countries.

Mr. Plimsoll stated that there had been few inquiries until the pressure of public opinion had constrained the Board of Trade to undertake these duties. In support of this allegation he said that there were only three inquiries in the year 1869.

A reference to the returns proves that in that year there were 37 inquiries. We might, if necessary, point out many other inaccuracies in his statements, but he has the merit of having called attention to the loss of life which occurs in the Mercantile Marine from the culpable neglect of shipowners, as well as from other preventible causes. Some allowance may therefore be made for mis-statements and exaggerations which we are obliged occasionally to notice.

The inquiries by the Board of Trade have in some cases suggested improvements, and contributed to the greater safety of navigation. It is, however, admitted that the procedure in these Courts requires amendment. The present system, it is said, renders

it impossible to get at the facts of the case. There is little confidence in the decisions of the Courts. The same tribunal cannot conveniently be a Court of Inquiry and also a Court of Criminal Law. Mr. O'Dowd, who has for many years been employed by the Board of Trade in these inquiries, stated that the proceedings in these Courts were not in conformity with constitutional procedure.

Neither the shipowners nor the relations of the persons drowned are represented in these inquiries. The owner of the lost vessel may therefore suffer from imputations to which he can offer no reply.

The Court may punish the master by depriving him of his certificate, but it has no power over the shipowner, however culpable his conduct may have been. The evidence proves that there is a great difficulty in constituting Courts qualified to decide the technical and complex questions which frequently come before them. In some cases the Courts appear to have decided with imperfect knowledge of the facts, but there is no ground for the imputation made by Mr. Plimsoll, that the Board of Trade desired to screen the shipowners.

The amendment of the Courts of Inquiry is an object of great importance, but is a matter which would require careful consideration, and we have not taken sufficient evidence upon the subject to justify our making any recommendations.

The Secretary of the Salvage Association stated that "the improvement in these inquiries would be one of the most effectual means of checking unseaworthy ships."

We believe that inquiries by a properly constituted Court would be beneficial to shipowners and to seamen. The causes of disasters at sea would be more fully disclosed, and attention would be called to other matters connected with navigation, by which the dangers of a seafaring life might be diminished. For this purpose, however, the Courts and the system of procedure should be remodelled.

We humbly submit the above Preliminary Report to Your Majesty's gracious consideration.

(Signed by the Royal Commissioners.)

* * * * * *

FINAL REPORT (a).

To The Queen's Most Excellent Majesty.

We, Your Majesty's Commissioners, appointed to inquire into the alleged unseaworthiness of British registered ships, humbly beg leave to present to Your Majesty the following Report on the several matters referred to us:—

Much misconception appears to exist as to what is meant by seaworthiness. We think it therefore necessary, before offering any

(a) See Introduction, page 23 *et seq.*

recommendation with a view to the preservation of human life at sea, that we should preface our observations with a few words on this subject.

The safety of a ship at sea cannot be secured by any one precaution or set of precautions, but requires the unceasing application of skill, care, and vigilance from her first design to her unloading at the port of destination. She must be well designed, well constructed, well equipped, well stowed, or she is not seaworthy. She must be also well manned and well navigated, otherwise all precautions as to her construction and as to her stowage will be unavailing.

These remarks are obvious enough when stated, but there is abundant proof that while public attention has been eagerly directed to some of the above precautions, other sources of danger have been altogether unnoticed. A summary of official Inquiries into wrecks and casualties, excluding collisions, shows that from the year 1856 to 1872 inclusive, a period of 17 years, while 60 ships were known to have been lost from defects in the vessel or in the stowage, 711 ships were lost from neglect or bad navigation.

Without placing too much reliance on this tabular statement, which, especially in the earlier years, may be imperfect, we shall be justified in ascribing a large portion of the casualties at sea to preventible causes other than the faulty construction, the insufficient repair, and overloading of ships.

We have endeavoured to obtain more complete statistics on this subject, in order to ascertain how far the loss of life at sea is to be ascribed to the several matters into which we have been commanded to inquire.

We have been furnished by the Committee at Lloyd's and the Registrar-General of Seamen, with elaborate statistics relating to casualties and loss of life at sea ; but, as these statistics were only produced at our last meeting, we have been unable to examine them sufficiently to test their accuracy or to form any definite conclusions upon them.

* * * * * *

Inquiries by the Board of Trade.

In our former Report we referred to the importance of instituting a better system of Inquiry into losses and casualties at sea, as affording the best means of discovering the cause of loss, and thereby contributing to the greater safety of navigation. We have taken further evidence upon this subject, and we will now briefly advert to the imperfections of the present system, and to the amendments which have been suggested.

The officers of the Board of Trade, the solicitors of the Customs, who act for the Board of Trade in these Inquiries, and the shipowners, have all stated serious objections to the present mode of conducting these Inquiries. The tribunal does not command general confidence.

the mode of procedure is said to be dilatory and expensive, the power of the Court is ill-defined, and in some cases cannot be enforced.

The present mode of conducting these Inquiries assumes the shape of a criminal proceeding against the captain, rather than a careful investigation into the cause of the disaster. The chief point at issue seems to be whether the captain is to be acquitted or punished; and, inasmuch as he is on his trial, he may, if he pleases, volunteer a statement, but cannot be examined.

The Court, again, has no power over the shipowner; he may be culpable, but he is altogether beyond the jurisdiction of the Court.

It is a matter of public interest, with a view to the preservation of human life, that these Inquiries should be conducted in such a manner as may best disclose the circumstances to which every disaster at sea should be ascribed.

We attach, therefore, great importance to instituting such a searching and impartial Inquiry as may elicit the facts of the case, and may show whether the casualty is owing to the faulty construction of the vessel, to bad stowage, to circumstances connected with the navigation, to the incompetency of officers, or to the neglect or misconduct of the crew.

The first proceeding in these Inquiries is the taking of a deposition under the powers of the Merchant Shipping Act of 1854.

The Receiver of Wrecks, who is usually an officer of the Customs, or in his absence any Justice of the Peace, is empowered to examine upon oath any person as to matters connected with the loss, abandonment, or material injury of any vessel.

In practice the Receiver of Wrecks always takes these depositions.

By a circular of 1869 the Board of Trade issued new instructions as to the matters to be inquired into, and the mode of taking the depositions.

The solicitors of the Customs recommend that the preliminary Inquiry should be limited to a few important points, such as would enable the Board of Trade to decide upon the expediency of ordering a further Investigation. If the Board consider such an Investigation desirable, they should lose no time in at once ordering the witnesses to be detained.

Under the present system there is much time lost before the Board of Trade decide whether or not there shall be a further Inquiry. In some instances there is a delay of weeks or months; meanwhile the master may have gone away on another voyage, and the crew may be abroad or dispersed through the country. It then becomes necessary to collect the witnesses wherever they can be found, and to await the return of the master.

In former years the official Inquiries were few in number. Mr. Hamel states that before the year 1872 they did not exceed on the average 37 per annum. In the year ending December, 1872, there

were 50 Inquiries. In the year 1873 there were 195 Inquiries, of which, however, 34 were abandoned.

It is admitted that a legal adviser at the Board of Trade would easily perceive whether a case was such as demanded an Inquiry. Thus expense and delay would be avoided. When an Inquiry has been resolved upon, the object should be to ascertain the cause of the casualty.

The constitution of the Court should, it is said, be altered, and the practice made uniform.

As to the Court, Mr. O'Dowd suggests that the kingdom should be divided into districts, and a competent barrister appointed as a Judge for each district. The Judge would require one, or perhaps two, nautical Assessors to assist him in the Inquiry. They should be men whose skill and character would inspire general confidence.

Mr. Farrer considers the creation of these new Courts unnecessary, and suggests another mode of meeting the difficulty.

Founding our opinion on the evidence which we have obtained, we recommend that the preliminary Inquiry by the Receiver of Wrecks should be limited to such a narrative statement as would enable the Board of Trade, with the aid of their legal adviser, to decide upon the propriety of an official Inquiry.

If such an Inquiry be deemed advisable, with the view of ascertaining the cause of the disaster, and thereby guarding against future casualties, we recommend that there should be a complete severance between this Inquiry and any proceedings of a penal character. It should be a mere inquest into the cause of the loss or casualty. The result should be reported to the Board of Trade, and the Board should have power to prosecute the shipowner, or to proceed criminally against the master, mate, or any member of the crew whose neglect of duty may have occasioned the disaster.

We think that the 11th section of the Merchant Shipping Act, 1871, should be amended, and be made expressly to extend to the master of the vessel; for it is very important to avoid any doubt that the master who without any justifiable excuse leaves port with his vessel in an unseaworthy condition, renders himself amenable to the criminal law.

On comparing the accidents occurring at sea with those taking place on land, and especially on railways, we are struck by the fact that, whereas in the latter cases it is usual to prosecute those servants whose negligence has occasioned loss of life, there is scarcely a single instance of a prosecution of a master or mate, or a man on the look-out or at the helm of a vessel, although the cases have undoubtedly been numerous in which vessels have been lost either by the negligence of the master or crew. We think that enactments relating to the punishment of the master or crew, whose negligence has occasioned loss of life or property, should be framed of a more definite and stringent character than those now in existence. We

are of opinion that the present system, under which the certificate of a master or other officer is suspended, very frequently only for an error of judgment, should be entirely discontinued, and that neither the Court of Inquiry, nor the Board of Trade, should have the power of dealing with the certificate. We think that the certificate of the officer should never be suspended, but that, in cases to be provided for by express enactment, the tribunal before which the officer is tried should have the power of cancelling either all his certificates, or, at its discretion, his higher certificates, leaving him in these cases the power of finding employment in a lower grade.

The constitution of the Court of Inquiry must rest with the Executive Government. The evidence of Mr. O'Dowd, of Mr. Hamel, and of Mr. Farrer, indicates the nature of the change required, in order to secure a tribunal commanding public confidence.

We attach great importance to these Inquiries, as affording the best means of ascertaining on whom the culpability rests for losses at sea, and we believe that such Inquiries, followed by the proceedings which we have suggested, would be more conducive to the safety of life at sea, than many of the complex and minute regulations which Parliament has heretofore enacted.

Conclusion.

In closing our Report at the termination of this prolonged Inquiry it may be convenient that we should recapitulate briefly the general principles on which our recommendations are founded.

* * * * * *

We consider that an improved system of inquiry into casualties at sea, such as we have above indicated, will afford the best means of guarding against future disasters. So far as we have been able to ascertain, the losses of life and property at sea, which may be directly ascribed to negligence of the shipowner, are few in comparison with those which are caused by subsequent neglect, or by events over which the shipowner has no control. A more searching system of inquiry may elicit the truth upon this subject. The statistics which we endeavoured to obtain on this head were not prepared in time to assist our investigations.

We attach great importance to our suggestion that the Marine Department of the Board of Trade should be revised and strengthened.

Some additional nautical assistance is requisite for the due performance of the duties now entrusted to the Board.

A legal adviser exclusively belonging to the Department is also essential for the conduct of the business.

It will be the duty of the Board of Trade to check the negligent, and to punish the culpable shipowner, but it is desirable that these functions should be performed without harassing the great body of

shipowners, who, by their ability and indefatigable energy, have contributed to the prosperity of the Empire.

In accordance with these views we have been anxious throughout our Report not to transfer responsibility from the shipowner to the Executive Government. It is the duty of the shipowner to keep his ship in a seaworthy condition, and to select competent officers and crew. We believe that under the arrangements suggested in our Report, the Board of Trade will have the means of ascertaining how far this duty has been fulfilled, and will then have the power to punish those persons who have been neglectful.

Such a policy, judiciously administered by the Board of Trade, will contribute to the greater safety of life at sea, and will thus tend to produce the results which this Commission was appointed to secure.

All which we humbly submit to Your Majesty's gracious consideration.

SOMERSET.
ALFRED.
ESLINGTON.
THOS. MILNER GIBSON.
J. HOPE.
ARTHUR COHEN.
THOMAS BRASSEY.
P. DENNY.
GEORGE DUNCAN.
E. D. EDGELL.
CHARLES W. MERRIFIELD.

F. NAPIER BROOME, *Secretary*,
July 1, 1874.

OFFICIAL CAUTION (a).

EXPLOSIONS OF COAL GAS ON BOARD SHIP.

The results of recent inquiries indicate that the simple and efficacious measures for preventing explosions of coal gas recommended by the Royal Commissioners appointed to inquire into the spontaneous combustion of coal in ships are either insufficiently known to, or recklessly disregarded by, the persons chiefly interested in the safe carriage of coal by sea.

The attention of shipowners, shipmasters, colliery owners, coal brokers, underwriters and others is therefore directed to the conclusions arrived at by the Royal Commissioners, especially to their fifth recommendation, which is as follows:—

"5. THAT WITH A VIEW TO GUARD AGAINST EXPLOSION, FREE AND CONTINUOUS EGRESS TO THE OPEN AIR, INDEPENDENTLY OF THE HATCHWAYS, SHOULD BE PROVIDED FOR THE EXPLOSIVE GASES BY MEANS OF A SYSTEM OF SURFACE VENTILATION, WHICH WOULD BE EFFECTIVE IN ALL CIRCUMSTANCES OF WEATHER."

Certificated masters and officers are especially warned that neglect on their part will, in the event of accident, be brought to the notice of the Wreck Commissioner or of the Court investigating the case.

The Board of Trade also give notice that, as vessels laden with coal, insufficiently or improperly ventilated, are dangerous to human life, it is their intention, under the Acts 17 & 18 Vict., c. 104, s. 239, and 39 & 40 Vict., c. 80, s. 4, or any other Acts enabling them so to do, to prosecute those persons who in future send or take, or attempt to send or take, or are parties to sending or taking or attempting to send or take to sea British coal-laden ships which, on account of such insufficient or improper ventilation, are in such unseaworthy state that the life of any person is likely to be thereby endangered; and all persons who so neglect their duty in respect of ventilation as to cause danger to life or limb.

The other conclusions of the Commissioners to which the Board of Trade think it right to call the attention of those interested in the carriage of coal by sea, although not directly relating to the question of explosions of coal gas, are as follows, viz.:—

"2. That the breakage of coal in its transport from the pit to the ship's hold, the shipment of pyritic coal in a wet condition, and especially ventilation, through the body of coal cargoes, conduce to spontaneous combustion, even though the coal may not be unfit for conveyance on long voyages.

(a) See Introduction, page 27, note (a). See also page 28, note (a).

"4. That when coal is being carried on long voyages the temperature in the various portions of the cargo should be tested periodically by thermometer and registered in the log."

All persons concerned would do well to peruse carefully the following condensed reports of inquiries which have been held in cases of explosion of coal gas in ships during the last four years ([a]).

T. H. FARRER, *Secretary*.

THOMAS GRAY, *Assistant-Secretary*,
July, 1881.

"LEVANT," of Liverpool. Official Number, 51,378.

On April 25th, 1877, the s.s. *Levant*, commenced to take in a cargo of South Wales coal of the description commonly called "Davis's Merthyr Steam Coal." She sailed from Cardiff on the 26th of the same month, bound for Gibraltar, and in consequence of heavy weather the hatches were battened down and were not removed until the 28th. At 6 a.m. on that day the mate gave orders for one hatch to be taken off each hold. This was done, but about three-quarters of an hour afterwards an explosion took place in the forecastle, in consequence of one of the crew igniting a match. A Formal Investigation into the circumstances attending the casualty was held at Liverpool before T. S. Raffles, Esq., Stipendiary Magistrate, Captains Grant and Wilson acting as Assessors. The Court were of opinion that the explosion was clearly due to the want of proper ventilation, which caused an accumulation of gas in the forecastle, and considered that vessels carrying cargoes similar to that of the *Levant* should be fitted with efficient deck ventilators. Five men were injured by the explosion.

"SARDINIAN," of Glasgow. Official Number, 71,695.

The *Sardinian* (an iron screw steamer of 2,577 tons register) left Liverpool on May 9th, 1878, bound for Quebec, and anchored at Moville, Lough Foyle, where the explosion occurred the following morning. The Court of Inquiry held at Liverpool before the Wreck Commissioner (Commander Foster and Captain Castle acting as Assessors), found that the casualty was due to the gas from 405 tons of Nixon's, Crawshay's, and Ebbw Vale coal, which was stowed in the lower main-hold for the ship's use, having been allowed to accumulate in the 'tween-decks, there being no ventilation whatever from either the main-hold or the 'tween-decks, and to a light having been taken into the 'tween-decks when the air was in a highly explosive state. The Court were also of opinion that ventilating shafts fitted with cowls, causing a continuous current of air over the surface of the coal, would effectually prevent such explosions. Four lives were lost by the casualty.

([a]) See also Official Caution of July, 1882; cases collected under the head of "Imperfect Ventilation," pages 250, 251.

"CHRYSOLITE," of Liverpool. Official Number, 29,924.

On June 4th, 1878, the s.s. *Chrysolite*, was berthed in the Alexandra Dock at Newport, and on the same day took in a cargo of Abercarn coal, 300 tons being shipped in the fore-hold, and about the same quantity being put in the after-hold. The vessel then commenced to ship bunker coal, and the foreman gave orders for the hatches to be put on. The coal was then tipped on the top of the hatches and wheeled from thence to the bunkers. The chief mate of the *Chrysolite* had given orders to be called at 2 o'clock in the morning, in order to take off the hatches, but at that hour the explosion, by which four lives were lost, occurred. The Coroner's jury brought in a verdict to the effect that the explosion was accidental, but recommended that greater care should be used in future in shipping gaseous coal, and that bunker coal should be shipped first, in order to obviate the closing of the vessel's hatches while in dock.

"CADUCEUS," of London. Official Number, 70,687.

This screw steamship, of 1,179 tons register, arrived at Cardiff on June 24th, 1878, having previously discharged a cargo of grain at Antwerp. She commenced to ship a coal cargo on the same day, and by the morning of the 28th had taken on board 2,180 tons of coal from the Ferndale Collieries. Semi-anthracite coal is known to be of a most explosive nature, and the owners of the collieries from whence it is obtained, issue notices to captains cautioning them of this fact, and warning them to keep their hatches open for several days after the completion of loading, and stating that no flame should be permitted in the hold or any other part of the vessel where gas might collect. There is also a bye-law of the Penarth Dock Company to the same effect. The only means of ventilation adopted on board the *Caduceus*, was by four holes cut along the side of the lower-deck, and these apertures were clearly not intended for purposes of ventilation, but with a view to the carriage of grain cargoes—so that the grain in the 'tween-decks might find its way into the lower hold. Forward of the fore-hatch there was no possible means for the gas to escape, and the lower fore-hatch was quite filled up with coal, halfway up the coamings. The coal had been freshly worked, and was in a condition to give off large quantities of gas. Although the hatches were not put on, it is certain that the gas had no means of escape, as when the explosion occurred the lower fore-hatch was so securely closed by the coal that the flame did not find its way out through the hatchway, but through the slits or holes much further aft. The Wreck Commissioner, before whom the Inquiry was held, was of opinion that had the vessel been fitted with two ventilators—one in the forepart of the lower hold passing through the seamen's berths and up through the deck, and another at the other end of the vessel—the casualty would not have occurred. Five men were seriously injured by the explosion.

"SUMMERLEE," of Glasgow. Official Number, 76,798.

This vessel is a screw steamer of 832 tons net register. She left Cardiff on August 23rd, 1878, with a cargo of Dunraven steam coal, bound for Rochefort. The loading occupied five days, and the coal is stated to have been received on board in a very wet state, rain having fallen heavily during the time of shipment. The vessel was fitted with two ventilators, but in consequence of having received damage on a previous voyage they were not utilised. After leaving Cardiff the *Summerlee* met with heavy weather and shipped a quantity of water. The master gave orders for the hatches to be put on, and to this action and the non-use of such means of ventilation as were at his disposal, the explosion was directly attributable, the main-hold being filled with pent up gas which only needed the contact of a flame to explode. The *Summerlee's* ventilators, even if they had been used, were not adapted to secure a continuous current of air, and according to the evidence of the chief officer were so placed as to render their use unsafe even in ordinary weather. A Formal Investigation was held at Cardiff before R. O. Jones, Esq., Stipendiary Magistrate, Captains Pickard and Castle acting as Assessors, into the circumstances attending the explosion. The Court did not consider that special blame should be imputed to the owners of the *Summerlee*, as shipowners generally have paid no attention to the warnings and recommendations on the subject of ventilation which have gone forth from Courts of Inquiry. Improved and yet simple means of preventing such accidents have been clearly pointed out, and the Court recommended that an Act of Parliament should be passed, compelling owners to provide proper means of ventilation, and masters to use them.

"BONNIE DUNKELD," of Dartmouth. Official Number, 63,078.

On September 19th, the brigantine *Bonnie Dunkeld* left Swansea with a cargo of 318 tons of coal from the Seven Sisters Colliery near Neath. This coal, though highly anthracitic, is stated by the Inspector of Mines for the South Wales District to give off considerable quantities of gas for some time after it has been worked. The loading occupied two days, the coal being shot down the main and after-hatches, and trimmed so as to slope down from aft forwards, with a space between the cargo and the deck. As soon as the cargo had been taken in, the master closed the fore and main-hatches, and the next day the main and after-hatches were closed, and the fore-hatch left open. This, however, was not done for the purpose of ventilation, but to enable the crew to get at the store-room, which was under the deck, just forward of the fore-hatch. From the time the vessel left Swansea until the explosion occurred (about 36 hours) all the hatches were tightly battened down, and the accumulated gas in the hold had no means whatever of escape. A sail being required from the store-room, the master ordered the

fore-hatch to be taken off, and one of the crew went down through the hatch into the sail-room below, where he struck a match and caused the explosion. The master of the *Bonnie Dunkeld*, who was uncertificated, stated that he thought it unnecessary to ventilate the cargo, as he was not aware that coal of the description on board his ship gave off gas. He also stated that he had never heard of ventilating coal cargoes in vessels of under 400 tons.

The owners of the colliery from whence the coal was obtained did not appear to have given any warning as to the necessity for keeping off the hatches or providing other means of ventilation.

The Court of Inquiry, in giving judgment, attributed the explosion to the master closing his hatches, and not using any means of cargo ventilation; and the Wreck Commissioner stated that, if another case came before him in which it was shown that a certificated master had left port with his hatches battened down, without providing any means of ventilation, and that an explosion occurred, a severe punishment would be inflicted.

The master further stated that he could not detect the presence of gas by the smell, but the Wreck Commissioner pointed out that an analysis of this kind of coal had been made, which showed that the coal contained only a small quantity of sulphur, and that the gas would consequently be comparatively free from smell.

"RICHMOND," of London. Official Number, 65,631.

The *Richmond* was a steamer of 694 tons, and was registered at the port of London. She left Penarth on the 19th of November, 1878, bound for Malta, with a cargo of 1,233 tons of South Wales coal. The coal was supplied by the Ocean Steam Coal Collieries Company, and, being freshly wrought when shipped, was in a condition to give off large quantities of gas. Four hundred and fifty tons were stowed in the after-hold, and the remainder in the fore-hold. Over each hold there were two ventilating bollards standing 2½ to 3 feet above the deck, but as the caps which closed them had become rusted in, the bollards were quite useless for purposes of ventilation. The vessel was also fitted with two ventilating cowls, standing about eight feet above the deck, one of which was intended to ventilate the officers' berths, and the other to ventilate the lazarette. The latter, however, became unshipped, and the master, instead of replacing it, ordered the hole to be plugged up. The hatches were open for three days after the *Richmond* left port, but, on the 22nd of November, a heavy sea having set in, they were securely battened down. After this was done there was no ventilation whatever, and the gas accumulated in the 'tween-deck, forward of the bulkhead of the lazarette, and passing through interstices in the bulkhead filled the lazarette.

The explosion is supposed to have been caused by the steward carrying a light down to the lazarette, and being of such a serious

nature as to blow out some of the rivets from the ship's plates it was subsequently determined to abandon the vessel, as she was rapidly sinking. All her crew were saved by a passing steamer. The Court considered that the explosion was due to the master having neglected to use the means provided on board for securing ventilation, for not having seen that the ventilating bollards were in proper working order, and for not having caused the hatches to be re-opened as soon as they might have been, and they suspended his certificate for six months.

The Wreck Commissioner observed in giving judgment, that if it had been clearly proved that a copy of the paper entitled "*Explosions of Coal Gas on board Ship, Official Caution,*" had been served on the master, his sentence would not have been so lenient.

Three men were severely injured by the explosion.

In drawing attention to the fact that in cases of explosion of South Wales steam coal witnesses invariably state that they have not noticed any smell of gas previous to the explosion, the Wreck Commissioner stated that this is due to the coal being almost free from sulphur, *and the gas given off being consequently inodorous.*

"CHARLES W. ANDERSON," of South Shields. Official Number, 63,014.

The *Charles W. Anderson* is an iron screw steamship of 937 tons register. On the 25th of May, 1878, she left Penarth Docks, bound to Malta, with a cargo of 1,685 tons of coal, of which 1,000 tons were stowed in the fore and main-holds and the remainder in the after-hold. The coal was ordinary South Wales steam coal, supplied by the Ocean Steam Coal Colliery from the Park, Maindy, Dare, and Eastern pits, and was freshly worked when shipped. The method of cargo ventilation adopted on board the *Charles W. Anderson* was as follows:—Over the fore-hold and about 10 feet from the forward bulkhead were four ventilating bollards standing about 2 feet above the deck and about the height of the hatch-coamings, and having orifices of about 4 inches in diameter. There were also 4 similar bollards over the after-hold about 10 feet from the after-bulkhead. After leaving port, portions of the three hatches were left open for purposes of ventilation, and they remained open until 4 p.m. on the 27th of May, when, the weather becoming very stormy, all the hatches were closed and battened down. Between 6 and 7 p.m. on the 28th, the chief engineer went into the screw-tunnel to examine the bearings, and on reaching the third bearing he saw a blue flame playing around his lamp. He then came out of the tunnel, leaving the lamp behind. The captain, on being informed of the presence of gas in the tunnel, called the chief engineer's attention to the imprudence of leaving a light there, but the chief engineer replied that there was no danger. The captain then ordered the hatches to be removed from

the after hatchway. When the two forward hatches had been taken off the carpenter was told to open the sluice which communicated with the well at the further end of the tunnel so that the gas in the tunnel might escape. Before this was done however, and during the removal of the two after hatches, an explosion took place which blew off the remainder of the hatches from the upper hatchway, lifted the deck abaft the hatchway, and injured the master and second mate. From an examination of the vessel after her arrival at Malta it was seen that there had been a slight explosion of gas in the tunnel which had caused injury to the engine-room, but that a more serious explosion had occurred in the 'tween-decks abaft the after hatchway. A Formal Investigation into the circumstances attending the explosion was held at Liverpool before the Wreck Commissioner, Captains Grant and Jones acting as Assessors. The Court was of opinion that the explosion was due to an accumulation of gas in the after-hold, which gas passed into the screw-tunnel and communicated with the light which had been carelessly left inside the mouth of the tunnel by the chief engineer; that the small ventilating bollards were totally insufficient for the purposes of cargo ventilation; that the owners were blameable for not providing better means of ventilation; and that the master was blameable for proceeding to sea without satisfying himself that the vessel had been provided with adequate means of ventilation.

"UNION," of Granton. Official Number, 72,404.

The *Union* is an iron sailing vessel of 188 tons register, and was employed in carrying coal from Sunderland to Portsmouth. On the 9th January, 1879, she commenced to take in a cargo of coal at the former port, and the next day she completed loading, having received on board 288 tons of Tunstall Wallsend house coal from the Ryehope Colliery. The coal was freshly worked at the time of shipment. In the stern of the vessel, in a line with and under the wheel, were two ventilators four inches in diameter, and rising about two feet six inches above the deck. These ventilators went through the deck, terminating about half an inch below it, and were closed by means of plugs. In the opinion of the Court before which an inquiry into the circumstances attending the explosion on board the *Union* was held, these ventilators were simply intended for the lazarette, and could not seriously have been meant for ventilating the cargo. After loading was completed, on the 10th of January, the main-hatch was put on and covered over, but the fore and after-hatches were left off. The next morning the main and after-hatches were battened down, and the ventilators were plugged. The fore-hatch however was left off. The weather being rough, the vessel's departure was delayed until the following day. The next morning preparations were made for sailing, and

the master removed the plug from the port ventilator. The cook, who had received orders to get out the side-lights, went into the lazarette for that purpose, where he struck a match which caused the explosion. The vessel sustained serious damage, and the master and cook were severely injured. The Court of Inquiry considered that the explosion was due to the master having improperly battened down the hatches on the 11th, and to the ventilators used being totally inadequate for ventilating the cargo. The owner of the *Union* stated that he had never heard of the Report of the Royal Commission on Spontaneous Combustion of Coal in Ships, and the Wreck Commissioner, in bringing the report under his notice, reiterated the means by which simple, adequate, and inexpensive ventilation may be secured: viz., by having two ventilators, one in the fore and the other in the after-part of the vessel, fitted with cowls, which should be so adjusted as to allow the air to go in at the one and pass out at the other, space being left between the coal and the under side of the deck, so as to allow a free passage of air.

"BUTESHIRE," of Glasgow. Official Number, 78,558.

The *Buteshire* is an iron screw steamship of 1,355 tons gross and 871 tons net register. On the morning of the 9th of April, 1879, she commenced to take in a cargo of "Colliery Small" coal at Cardiff, and on the 10th had completed loading, her cargo consisting of 1,800 tons of coal, exclusive of 250 tons of bunker coal. Of this quantity 725 tons were placed in the after-holds; but the holds not being completely filled the coal was sloped away aft, leaving an empty space in the after part both of the lower-hold and of the 'tween-decks.

The system of cargo ventilation adopted on board the *Buteshire* was as follows: In the forehold there were two scuttles, about 14 or 16 inches in diameter, and in the after-hold there were two similar scuttles, one of which, however, had been included in a small bread tank which had been constructed by the carpenter, thus leaving only one scuttle for the ventilation of the after 'tween-decks. These scuttles were fitted with close and open covers, and as they stood only about 7 inches above the deck, would have to be closed in bad weather. A ventilating cowl was also fixed upon each hatchway.

On the 12th of April the *Buteshire* left Cardiff, bound to Savona. At noon the same day, when off Nash Point, a violent explosion occurred in the after part of the vessel, which wrecked the cabin, and seriously injured the captain, who died the same day. At the time the explosion occurred the hatches were being put on the after hatchway, the main hatchway having been previously battened down.

A Formal Investigation into the circumstances attending the

casualty was held before the Wreck Commissioner, assisted by Commander Visconti, R.N., and Captain Jones, and the Court were of opinion that the explosion was due to gas arising from the coal in the after-hold having been allowed to accumulate in the empty spaces which were left in the after parts of the 'tween-decks and lower-hold, and to this gas having become ignited probably by a live coal or spark from the funnel, and that the accumulation of gas was due to the coal having been trimmed so close to the deck as to prevent a free current of air passing over the surface. The Court considered that the owners were not to blame as they had given their superintending engineer instructions to take all necessary measures for ventilating the cargo, and that if blame did attach to anyone it was to the superintending engineer for not seeing that the cargo was properly trimmed, and that a clear space was left for the air to pass over the surface of the coal.

"STREONSHALK," of Whitby. Official Number, 78,863.

The *Streonshalk* is an iron screw steamship of 1,022 tons net and 1,588 tons gross register. On the 5th of April, 1879, she commenced to take in a cargo of coal at Newport, and on the 10th she left that port bound for Savona. Her cargo consisted of 1,695 tons of newly wrought coal, which is stated to have been obtained from the Newport Abercarne Black Vein Steam Coal Colliery. This coal is semi-bituminous, and has all the properties of the ordinary South Wales coal, giving off, when newly wrought or broken, a considerable quantity of explosive gas. 338 tons of the cargo were stowed in the fore-hold, about 600 tons in the main-hold, and the remainder (757 tons) in the after-hold. The main-hold was quite full, but in the fore-hold the coal was sloped away forward, and in the after-hold it was sloped away aft, for the purpose of trimming the vessel, thus leaving empty spaces in the fore part of the fore-hold and in the after part of the after-hold, the empty space in the after-hold being sufficient to contain from five to six waggon loads more of coal. The coal was trimmed from the centre into the wings, leaving a manhole or passage down the centre from end to end for the purpose of facilitating the escape of the gas. In each hold there were two ventilating pipes or tubes, each about 9 inches in diameter, and fitted with cowls, the one being in the fore part and the other in the after part of the hold. These tubes just pierced the upper deck, and stood about 4 or 5 feet above it. In addition to the tubes there were to each hold two pairs of ventilating bits, with orifices of from 3 to 4 inches across.

At 6 p.m. on the 12th the wind shifted, and it having commenced to blow, the hatches were battened down and the ventilating bits were closed. It also appears that the ventilating tubes had been

shut from the time of leaving Newport, and that the cowls had been stowed away. There was therefore no way in which the gas which might be given off from the coal in the after-hold could escape except through the grating in the floor of the store-room; and as the hatchway over the store-room and the ventilating bits were closed, such gas would pass from the store-room through the door into the spare berth, and from thence into the saloon. On the morning of the 13th, when the *Streonshalk* was about 60 miles from Cape Finisterre, an explosion occurred in the after part of the vessel, which completely destroyed the cabin and carried away the deck above, at the same time seriously injuring the master, the master's wife, the first mate, and steward.

An Inquiry into the circumstances attending the explosion was held before the Wreck Commissioner, assisted by Commander Forster, R.N., and Captain Sceales. The Court were of opinion that the explosion was caused by the gas escaping from the after-hold into the store-room through a grating in the floor which was the only means of escape left open, and thence through the door in the cabin bulkhead into the spare berth, and thence into the saloon where a fire was burning, by which most probably the gas was ignited; that the master was not justified in neglecting to ship the ventilating cowls, and in closing the ventilating bits when the hatches were battened down, but they returned to him his certificate.

"COLUMBINE," of Hull. Official Number, 56,230.

This vessel (a screw steamer of 498 tons register) on the evening of February 6th, 1880, commenced to load a cargo of coal at Cardiff. The following evening the cargo had all been taken in. The main-hold was filled with large steam coal from Messrs. Waynes' pits. The fore-hold was partly filled with small coal, the screenings of the steam coal referred to, and it was trimmed so as to leave a passage under the hatchway, the coal sloping forward. The after-hold was also partly filled with screenings, which were trimmed so as to form a heap of coal which filled up the hatchway, and across the vessel, but of which the two ends sloped fore-and-aft, leaving a large space at each end of the hold. The *Columbine* had four ventilators in the main-hold, but no means existed for ventilating the fore or after-holds except the hatchways.

On the morning of the 9th February, the *Columbine* left the Bute Docks, and the explosion occurred when she was off Penarth Head. The whole of the main-deck from the steerage cabins aft with the poop deck above it was lifted and displaced, the captain's cabin being wrecked, the deck beams broken, and the bulkhead bulged. The second mate was either blown or fell overboard and was picked up, an able seaman who was in the 'tween-decks was killed, and the second engineer was severely scorched and burnt. An Inquiry was

held into the circumstances attending the explosion, and the Court found that the master of the *Columbine* was to blame in allowing empty spaces in the after-hold, especially having regard to the fact that no ventilation was provided, except by the hatchways; and also for not seeing that the cargo was properly stowed and trimmed; and his certificate was suspended for three months. Adverting to the simple and inexpensive means of coal cargo ventilation recommended by the Royal Commission, the Court, finding from the evidence of some of the witnesses that it is still very rare to find other than hatchway ventilation in most of the steamers employed in carrying coal cargoes from Cardiff, were strongly of opinion that legislation is urgently required to compel owners of vessels carrying coal cargoes to provide proper ventilation for such cargoes. The master of the *Columbine* had been furnished with a copy of the "Official Caution," but is stated not to have read it until after the explosion occurred.

"GREECE," of Liverpool. Official Number, 45,170.

The *Greece* is an iron screw steamer of 3,242 tons net register. She had sailed from London for New York with a general cargo, and at the time the explosion occurred was lying at the Eagle Dock, Hoboken, New Jersey. Her bunker coal (originally consisting of 1,252 tons) was obtained from the Cyfartha Collieries, and being semi-anthracite coal was of a very gaseous nature, and required free surface ventilation. Of the bunker coal 413 tons were stowed in the midships in the lower-hold, beneath the orlop-deck, which deck was also partly filled with cargo. Above this another batch of coal was stowed upon the steerage or 'tween-decks. The ventilation of the lower main-hold had been entirely overlooked or neglected when the vessel was loaded, although this hold is stated to have been properly ventilated on previous voyages. When the *Greece* arrived at Hoboken, and while the vessel was being hauled alongside the wharf, four stevedore's men rushed on board, and after removing the hatches of the orlop-deck went into the main-hold with a lamp, which was subsequently found in the upper-deck smashed to pieces, thus clearly indicating the cause of the disaster. The Court of Inquiry were of opinion that the casualty was due to the stevedore's men taking a light into the hold, without the knowledge of the officers of the *Greece*, and that the gas had accumulated owing to the absence of ventilation in the No. 3 lower-hold. From the evidence adduced at the Inquiry it appeared that the *Greece* had been loaded and coaled under the supervision of the Marine Superintendent of the National Steamship Company, and that the captain had practically no knowledge of the nature of the cargo or ventilation of the holds when he took command of the ship. Three of the stevedore's men were killed.

"UGANDA," of Penzance. Official Number, 47,152.

The *Uganda*, a schooner of 138 tons, left Swansea on March 13th, 1880, bound to Plymouth, with a cargo of 228 tons of anthracite coal. Seventy tons of her cargo consisted of small screenings and the remainder was large coal. The vessel had only one hold and the cargo was trimmed from the forecastle bulkhead to the cabin bulkhead aft, sloping at each end to three or four feet from the deck beams, but there was not less than four inches space at any part beneath the beams. She had three hatchways and two ventilators of 5½ inches diameter fitted with cowls, one at the extreme after part of the hold and the other abreast the foremast on the port-side. On leaving port the main-hatch was battened down, and about eleven hours afterwards the fore-and-after hatches were put on. At 8 p.m. the master left the deck, and the mate, who was on the watch, went into the forecastle to attend to a fire which was burning there, and as he was returning up the forecastle ladder an explosion took place which threw him back stunned on the forecastle floor. The main-deck was blown up, the raised quarter-deck shattered and the hatches blown off. An Inquiry was held into the circumstances attending the explosion, and the Court found that the ventilators, although they might have ensured sufficient surface ventilation in calm weather, were not properly trimmed, one being altogether unshipped, and the cowl of the other being fixed to the flange by oxidation. The explosion was attributed to a rapid accumulation of sulphuretted hodrogen gas, which, owing to defective ventilation, found its way through the forecastle bulkhead to the forecastle fire and there became ignited.

The master of the *Uganda*, who had been expressly cautioned as to the dangerous nature of his cargo, both by the shippers and by the officers of the Board of Trade, was severely censured for his neglect in respect of the condition of the ventilators, but as he was uncertificated the Court could not deal with his case effectually. The vessel left port with a cargo of freshly wrought fiery coal (the subject of special cautions), the hatches were battened down, one ventilator was unshipped, the cowl of the other was immovable, and under the feet of the crew was a mass of gas producing coal almost hermetically sealed. The Court, in drawing attention to these facts, reminded masters that if they undertake to carry cargoes of a dangerous character they are bound to use all proper available means for ensuring the safety of their crews, and if they neglect to do so a grave and even criminal responsibility rests upon them.

"HORSEGUARDS," of Leith. Official Number, 65,774.

At 2 p.m. on the 12th of August, 1880, this vessel, a screw steamer of 909 tons, commenced to load a cargo of Ocean Steam Coal at Penarth Dock, and at 11 p.m. on the 13th an explosion occurred in her No. 3 hold. The *Horseguards* has five holds, which

are divided by bulkheads. The lower part of hold No. 3, called the tank hold, is used, when the vessel is light, as a water ballast tank, and is separated from the upper part, forming No. 3 hold, by an iron covering or deck pierced by a hatchway 7 feet 6 inches in diameter, and by a man-hole 18¼ inches by 15 inches, which, with a 4-inch pipe carried up to the 'tween-decks, was the only means of ventilation. No 3 hold was ventilated by 7-inch pipes, carried about 4 feet above the upper-deck, and fitted with cowls. At the time of shipment the coal was newly wrought and was in a condition to throw off a large quantity of explosive gas. The day of the 13th had been very sultry and the night was excessively hot. At 11 p.m. the explosion occurred in No. 3 hold where the trimmers, who used naked lights, were employed.

A Formal Investigation into the circumstances attending the explosion was held at Cardiff, and the Court were of opinion that the gas which had accumulated over the surface of the coal in the tank in the lower part of No. 3 hold had found its way through the interstices of the coal which blocked up the hatchway and man-hole in the top of the tank, and coming in contact with one of the naked lights used by the trimmers, had exploded, at the same time firing the gas in the tank below. The Court were further of opinion that the ventilation of the tank was imperfect, and that when naked lights are used in the trimming of coal cargoes their use should be accompanied by great attention to ventilation. Since the explosion referred to the owners of the *Horseguards* have provided additional means of ventilating their vessel, including two 6-inch ventilators in the lower tank.

"LLANISHEN," of Cardiff. Official Number, 72,520.

In September, 1880, this vessel, a screw steamer of 676 tons, took in a cargo of steam coal at Cardiff. Tho cargo, which consisted of 1,242 tons (exclusive of 167 tons for the bunkers) was raised in the Rhondda, Aberdare, and Merthyr Valleys, and consisted of 535 tons of large coal, the remainder being small.

The *Llanishen* had two ventilators in the fore-hold, one in the main-hold, and two in the after-hold. The engineers' mess-room, where the explosion took place, was divided from the after-hold by a single wooden bulkhead, evidently not air-tight, and the only means of ventilation it possessed was a flange fitted in the deck, through which the stove pipe was carried. The flange was fitted with a cap on the outside to prevent rain, &c., from going below, and on the under side was further protected by a piece of wood buttoned to the deck. There was therefore absolutely no ventilation of the mess-room except the companion and two screw ports. The fore part of the after-hold was filled with coal up to the coamings of the hatchway, which was closed, and the wings on each side are also stated to have been filled "tight up." At 10 p.m. on the day after the loading was completed

the third engineer was seen to go forward to the mess-room, and directly afterwards an explosion took place. Sparks and smoke were seen issuing from the mess-room, and the third engineer was found there unconscious and burnt on the face and hands. He had evidently, on entering the mess-room, struck a match to light the lamp, and in so doing had ignited the coal gas, which had leaked through the wooden bulkhead from the after-hold.

The Court of Inquiry found that the ventilation of the ship was defective, the cargo improperly stowed, and that leakage of gas from the hold to the engineers' quarters was not properly guarded against by an efficient bulkhead, for which deficiencies the owners of the *Llanishen* were held reponsible, and adjudged to pay £10 towards the cost of the Inquiry.

"ALNE HOLME," of Maryport. Official Number, 72,925.

In February, 1881, the above-named vessel (an iron screw steamer of 657 tons net register) was loaded at Newport, Monmouthshire, with a cargo of 1,369 tons of Risca black vein coal. This coal is described as a "fiery" coal, giving off large quantities of gas, but perfectly safe to be carried with proper ventilation. The *Alne Holme* had previously carried seven cargoes of coal, but she is stated not to have been built for the coal trade. The only ventilation she had, except that afforded by the hatchways, was by means of two bollards on each side of the vessel abreast the mainmast, from 14 to 15 inches in height, and fitted with screws, from 2½ to 3 inches in diameter. Previous to the loading, the master of the *Alne Holme* was served by the colliery agent with a printed notice warning him of the explosive nature of the cargo (which was shipped direct from the mine), and he was also furnished with a copy of the "Official Caution." The vessel sailed on the 24th of February, bound for Gibraltar, and after passing the Wolf Rock, the sea being very rough, the main and bunker-hatches were put on, and the after bollards screwed down. The explosion occurred three days afterwards off Vigo. The fore and main-hatches were blown off, the coamings of the fore-hatchway started, and the topsail and foresail set on fire. One seaman was subsequently found to be missing. A Formal Investigation was held at Liverpool, and the Court attributed the explosion to deficient ventilation, and the managing owner of the *Alne Holme* was ordered to pay £100 towards the cost of the Inquiry. The Court also expressed their regret that although shipowners have full information before them of the dangers attending the carriage of coal cargoes, yet risks are run which could be avoided by providing proper means of ventilation for such cargoes.

The Court commented on the fact that even after the casualty above referred to had occurred, the *Alne Holme* was sent to Cardiff to load another cargo of coal without any attempt being made to

improve her ventilation. She was, however, stopped by the Board of Trade, and has since been fitted with proper ventilators.

Attention is also called to the following Report and Statement:

REPORT by the INSPECTORS of COAL MINES in SCOTLAND as to SCOTCH COAL.

SIR,— Rutherglen, Glasgow, 9th December, 1878.

WE have the honour to acknowledge the receipt of a letter from Mr. Thomas Gray, of the Board of Trade, Marine Department, dated 27th November, 1878, to Mr. Liddell, requesting the opinion of the Inspectors of the Home Office as to the explosive character of Scotch coal, and whether or not it requires to be ventilated when carried as cargo on board ship, and also as to what kinds of coal do, and what kinds do not, require ventilation.

As requested by you we now send our joint observations upon these questions.

Many of the Scotch collieries from which steam coal is raised give off fire-damp, and explosive gases are also given off in the cannel seams. We would not, therefore, recommend any relaxation of the rules now in existence for the ventilation of Scotch coal when carried as cargo on board ship.

No doubt at some parts of the Scotch coalfield fire-damp has not been seen, but speaking generally there are no seams of coal worked in Scotland, either "common" or "cannel," where at one place or other of the mineral field fire-damp has not been found. We could not, therefore, make any distinction between coals raised from collieries giving off fire-damp and those from collieries where fire-damp has not yet been seen.

I have, &c.,

(Signed) RALPH MOORE,
Inspector of Mines.

WILLIAM ALEXANDER,
Inspector of Mines.

The Right Hon. R. A. CROSS, M.P.,
Secretary of State for the Home Department.

STATEMENT by the GOVERNMENT INSPECTOR of MINES for SOUTH WALES, with reference to the Foundering of the Screw Steamer *Richmond* off Cape Finisterre, by reason of an EXPLOSION of COAL GAS.

THOMAS ERRINGTON WALES says—

I am Government Inspector of Mines for South Wales. I have held that office for fourteen years.

I have seen an account in the newspapers lately of the foundering of the screw steamship *Richmond* off Cape Finisterre,' by reason of an explosion of coal gas.

This vessel, I believe, took in a cargo of "Ocean Steam Coal" at Penarth. The Ocean Steam Coal is a hard semi-anthracite coal, and is used for steam purposes only.

There are several collieries belonging to the "Ocean Steam Coal Company." The seams of coal worked in them are known as the "upper four feet," and "six feet" veins. The quality of the coal worked in all the Ocean Steam Coal Company's Collieries is practically the same. The collieries are worked exclusively with locked safety lamps. The coal, as may be expected therefore from this precaution, is a fiery coal, but not more so than other steam coal. It gives off gas during the working of the coal, and, I believe, in a greater or less degree, for several days after it is worked.

The "Ocean Steam Coal" is not a dangerous coal to carry on board ship, provided some ventilation of the hold in which it is put be insisted upon. Without ventilation the hold of a ship laden with coal is simply a great gas-holder, and the presence of a large body of highly inflammable gas, pent up in an air-tight space, exposes the lives of the persons on board and the ship to destruction. Surface ventilation is, in my opinion, necessary in all cases of cargoes of coal, laden on board large vessels, and the ventilation should be so arranged that there should be at least one or more tubes going through the main-deck into every hold. The height of these air shafts above and below the deck are matters of easy arrangement.

To depend on ventilation from the hatchway is unwise in the highest degree, because, as soon as the vessel meets with bad weather and takes in water over on the deck the hatches are put on to prevent the water getting down into the hold.

An instance of this is given in the case which is now under inquiry. I am told that some two days after the *Richmond* got to sea she met with heavy weather, when it became necessary to batten down the hatches. No means of ventilating the hold then existed. Two days later a fearful explosion of coal gas took place, which caused serious bodily injury to several members of the crew, and ended in the destruction of the vessel. It is said that on examination it was found the cargo was not on fire, that after the explosion took place no signs of fire in the ship or cargo existed, which clearly proves that the casualty did not arise from spontaneous combustion in the coal.

The circumstance, disastrous as it was, is capable of the easiest explanation. In the two days which followed after the hatches were put on, a large quantity of carburetted hydrogen gas was liberated from the coal, and thus the after compartment became full of gas. Somehow this gas came in contact with a naked flame, and the whole of the gas was suddenly ignited. The fact upon which I have just dwelt, that this explosion was not due to spontaneous combustion, illustrates the truth of the theory which I have advanced upon

former Inquiries, with reference to explosions of coal gas on board ship, that the steam coal raised in the South Wales coal-field is not liable to spontaneous combustion.

Copies of this notice can be obtained at the Custom House, or Mercantile Marine Office, free of charge.

Signed by order of the Board,

THOMAS GRAY, *Assistant-Secretary.*

NOTE.—*A copy of this Notice is to be sent by the Principal Officer of the district to the owner of every sea-going steamship in his district, and to every loading broker engaged in shipping coal in his district. A copy is also to be given to the master of each ship carrying coal, at the time he appears at the Mercantile Marine Office to engage his crew.*

OFFICIAL CAUTION (a).

The Board of Trade desire to call the attention of owners, masters, and others interested, to the opinions given with regard to neglect, overloading, bad stowage, imperfect ventilation, and faults of construction and machinery in the Reports of various Wreck Courts, as shown below.

Board of Trade,
Marine Department,
July, 1882.

THOMAS GRAY,
Assistant-Secretary.

Subject of Remark.	Name of Ship.
Neglect	*Æron Vale.*
	Alfonso.
	Alne Holme.
	Amadine.
	Annie Richmond.
	Bruce.
	Calliope.
	Columbine.
	Danae.
	Express.
	Garmouth.
	Golden Sea.
	Greece.
	Jones Brothers.
	Marlborough.
	Meredith.
	Norseman.
	Penelope Tutton.
	Penwith.
	Phœbe Lewis.
	Rathmore.

(a) See Introduction, page 29, note.

Subject of Remark.	Name of Ship.
Neglect	*Salopian.*
	Tiara.
	Traveller.
	Uganda.
	Yanikale.
Overloading	*Adina.*
	Æron Vale.
	Ballina.
	Blackpool.
	Calliope.
	Commodore.
	Constance.
	Danae.
	Elsie.
	Essex.
	Express.
	Hardwick.
	Kensington.
	Llanedarne.
	Lufra.
	Marlborough.
	Mildred.
	Othere.
	Pampero.
	Penelope Tutton.
	Phœbe Lewis.
	Rathmore.
	Tiara.
	Yanikale.
Bad Stowage	*Alfonso.*
	Annie Arbib.
	Calliope.
	Columbine.
	Commodore.
	Danae.
	Estepona.
	Essex.
	Galatea.
	Galeed.
	Golden Sea.
	Hardwick.
	Impero.
	Killeena.
	Lebanon.
	Llanishen.
	Norseman.
	Penwith.
	Peruvian.
	Rathmore.
	Telford.
	Yanikale.
Imperfect Ventilation	*Alne Holme.*
	Adina.
	Amadine.
	Annie Richmond.

Subject of Remark.	Name of Ship.
Imperfect Ventilation	*Columbine.*
	Garmouth.
	Greece.
	Kensington.
	Llanishen.
	Magic.
	Merton.
	Penwith.
	Prometheus.
	Uganda.
Faults of Construction	*Danae.*
	Emblehope.
	Estepona.
	Hardwick.
	Joseph Pease.
	Kensington.
	Lufra.
	Marlborough.
	Mildred.
	Rathmore.
	Tiara.
Faults of Machinery	*Jones Brothers.*
	Meredith.
	Telford.
	Traveller.

Précis of the Reports referred to are annexed in alphabetical order.

1. "ADINA," of Glasgow. Official Number, 58,579.

Date when last heard of, 20th April, 1880.

Date of Inquiry, 22nd November, 1880.

The *Adina* was an iron schooner of 92 tons register. On the 20th April, 1880, she sailed from the Clyde, bound for Exeter, with a cargo of 176 tons 6 cwt. of coal, and since that date nothing has been heard of her. An Inquiry into the circumstances of the case was held at Glasgow before the Wreck Commissioner, assisted by Captain H. D. Grant, R.N., and Captain Kennedy, Assessors. The Court found that the vessel had no other means of ventilation for her hold than the booby-hatch, which was wholly insufficient for the purpose. As, however, the coal which the vessel carried is of a kind which gives off very little gas, being shipped from the Heywood Collieries, the Court did not think that the loss of the vessel was due to an explosion. The Court consider, however, that the vessel's freeboard of only from 1 foot 3½ inches to 1 foot 4 inches was wholly insufficient, and that she was consequently overladen; and it is to this cause that they attribute her loss.

2. "ÆRON VALE," of Aberystwith. Official Number, 28,297.

Date of Casualty, 6th June, 1881.

Date of Inquiry, 22nd and 23rd July, 1881.

The *Æron Vale* was a wooden brig of 201·63 tons register. In April, 1881, she loaded at Cardiff a cargo of 300 tons of steel rails, but when the loading was completed she was found to be making water. She was therefore placed on the mud for examination, and an open seam being found it was caulked and payed with coal tar instead of pitch. Several other bad places had also to be repaired. On the 30th April the *Æron Vale* was towed to Penarth Roads, still making water, and on the 10th May she sailed for Caravalles, Brazil. On the 25th May the vessel began to leak more, and continued to do so, and on the 6th June the water had increased so rapidly that the master and crew were compelled to abandon the ship, which shortly afterwards foundered.

An Inquiry was held at Cardiff, before Mr. R. O. Jones, Stipendiary Magistrate, assisted by Captains Forster and Castle, Assessors. The Court found that the *Æron Vale* was not in a good and seaworthy condition when she left Newport, nor when she sailed from Penarth Roads, and that the leaks discovered were not properly repaired. They considered that the freeboard (2 feet 3 inches) was not sufficient, and that the cargo, having regard to its nature and to the construction and condition of the vessel, was too heavy. The Court did not think that the master was justified in proceeding to sea with the vessel in her condition, and they also blame him for not taking her into port. They, therefore, suspended the master's certificate for six months.

3. S.S. "ALFONSO," of Middlesborough. Official Number, 78,401.

Date of Abandonment, 18th October, 1879.

Date of Inquiry, 7th January, 1880.

On the 15th October, 1879, the *Alfonso* sailed from Aarhuus for Ipswich with a cargo of 1,619 quarters of wheat, stowed partly in bulk and partly in bags. On the 18th a moderate gale came on, during which the vessel lurched and went over on her port-side, and it was then found that the cargo had shifted through the temporary wooden bulkhead which had been fitted in the main-hold having given way. Subsequently the vessel was abandoned. An Inquiry was held at Middlesborough before Mr. Coleman, with Captains Curling and Beasley, Assessors. The Court attributed the casualty to the shifting of the cargo, and they considered that the ship had not been properly laden, as required by section 22 of the Merchant Shipping Act, 1876. They found the master in default for fitting a bulkhead unfit for the purpose, and not using other and sufficient means to prevent the cargo from shifting. The vessel had no shifting boards, the master relying solely on the temporary

bulkhead and the packing and pressure of the grain in bulk, and no attempt had been made to use the bags by laying them on the top of the grain. The master was aware of the cargo the vessel was to carry, and he had special facilities for getting shifting boards. The Courts also found the mate in default for neglecting to see that the temporary bulkhead was properly fixed and secured before taking in cargo. The Court suspended the master's certificate for six months and reprimanded the mate.

4. S.S. "ALNE HOLME," of Maryport. Official Number, 72,925.
(See *Official Caution*, page 246.)

5. "AMADINE," of Liverpool. Official Number, 56,466.

Date of Abandonment, 11th December, 1876.

Date of Inquiry, 6th June, 1877.

On the 30th August, 1876, the *Amadine* sailed from London on a voyage to Penang. Her cargo consisted of 325 tons of coals, besides a quantity of coal tar, matches, beer, spirits, and crockery. The hold was ventilated by means of a sliding panel in the fore and after-hatches, which were provided with covers in case of bad weather. The main-hatch was battened down, and the long boat put above it. On the 6th December, the boatswain when called to relieve the watch was found stupefied, and there was a strong sulphurous smell in the cabin. On the two following days the smoke or steam increased, but nothing was done to ascertain the cause until Saturday, the 9th December, when, as the vapour was still increasing, the master had a ventilator put down the hold. It soon became clear that the ship was on fire, and after making unavailing efforts to save her, the master and crew were forced to abandon her. At the Inquiry which was held in London before the Wreck Commissioner and Captains Forster and Castle, acting as Assessors, the Court found that the loss of the ship was due to spontaneous combustion of the coal. The Commissioner observed that the coal had been shipped in a wet condition; that a part of it had been subjected to much breakage; and that there was no evidence to show that it did not contain iron pyrites.

The Court thought that the mode of ventilation adopted was not good or proper, but that it did not contribute to the loss of the ship. They, however, blamed the master for not taking steps at the first to ascertain the cause which ultimately led to the burning of the vessel.

6. S.S. "ANNIE ARBIB," of London. Official Number, 68,522.

Date of Casualty, 28th November, 1881.

Date of Inquiry, 5th and 6th January, 1882.

The *Annie Arbib* was an iron screw steamship of 753 tons register. On the 16th November she left Cronstadt for London,

with a cargo of about 1,200 or 1,210 tons of grain (wheat and oats) and 115 tons of bunker coal. After passing Copenhagen she encountered a heavy gale, during which she took a list to starboard, and from that time the cargo seemed to be constantly shifting from side to side. The gale increased in violence, till at length the vessel being struck by a tremendous sea, which caused serious damage, lay over on her starboard-side. The master and crew then abandoned her and were taken into Yarmouth by a smack.

An Inquiry was held at Westminster before the Wreck Commissioner, assisted by Captains Forster and Castle, and Mr. C. W. Merrifield, Assessors. The Court considered that the shifting boards fitted in the vessel were not sufficient for the purpose. There was a space of about 9 or 10 feet long in the fore part of the fore 'tween-decks, and a like space in the fore part of the after 'tween-decks, where there were no shifting boards at all, and in the after part of the fore-hold as well in the lower-hold as in the 'tween-decks there was also for a length of some 3 or 4 feet no shifting boards, and although about 4 or 5 feet of this space immediately below the hatchways would be covered to the extent of about a foot by the projecting ends of the shifting boards in No. 2 hatchway, the lower parts were open again; some of the shifting boards were secured to the stanchions by hook bolts and nuts at each end, whilst others had only one end secured, the other end resting against the stanchions, which formed a species of ladder for the men going in and out of the hatchways, and it was to these loose ends for the most part that the shifting boards in the hatchways were secured by spikes or nails, 5 inches long. Such a mode of fixing the boards was, in the opinion of the Assessors, neither safe nor proper, the planks being 17 feet long and single ought to have been attached at every stanchion. There were, moreover, no beam fillings in the 'tween-decks. The Court came to the conclusion that the master was in default for the defective stowage of the cargo to which the loss of the vessel was attributable, and they therefore suspended his certificate for six months.

7. "Annie Richmond," of Liverpool. Official Number, 60,070.

Date of abandonment, 5th October, 1877.

Date of Inquiry, 13th March, 1878.

This vessel sailed from Liverpool for Valparaiso, on the 1st August, 1877, with a cargo of 1,000 tons of coal. A part of this had been taken from the Main Delf Seam of the West Lancashire Colliery Company, and was particularly liable to spontaneous combustion. Some of it had been shipped in a wet condition, and it was also much broken in loading. The ventilation of the ship was deficient, and in bad weather there was none at all, as the hatches when down, covered the mouths of the ventilators.

On the 2nd October the cargo was observed to be on fire, and notwithstanding the efforts made to keep it under, the master and crew were finally obliged to abandon the ship. An Inquiry was held at Liverpool before Mr. Raffles, and Captains Grant and Wilson, Assessors. The Court found the master to blame for having no thermometers on board, as recommended by the Royal Commission on Spontaneous Combustion, a precaution which they thought the owners, as well as the master, might have seen to. The appliances for extinguishing fire were most unsatisfactory, as there was no fire-engine, and the hose was in a useless state. The owners should have provided a fire-engine, and the master should have seen that the hose was in a proper state of repair. The master should also have examined all the ventilators before sailing, and should from time to time have examined into the state of the cargo. The Court considered that owners and masters of coal-laden ships should be compelled to attend to the recommendation of the Royal Commission as to carrying thermometers for the purpose of testing, periodically, the temperature of the cargo, and that such an omission on the part of the master should be considered as a gross act of negligence.

They also urged the necessity for a system of surface ventilation, as recommended by the Commissioners.

8. S.S. "Ballina," of Liverpool. Official Number, 78,780.

Date when last heard of, 5th January, 1882.

Date of Inquiry, 10th, 11th, 28th and 29th March, 1882.

The *Ballina* was an iron screw steamship of 170 tons register. She sailed from Liverpool on the 5th January, 1882, for Ballina, with a general cargo amounting, with the bunker coal, to 296 tons, and was never seen again after finally leaving the river. A few days afterwards a quantity of her wreckage and the bodies of three of the crew were picked up in the neighbourhood of the Isle of Man. An Inquiry was held at Liverpool before the Wreck Commissioner, assisted by Captain J. M. G. Grant, R.N., Commander H. D. Burney, R.N., and Mr. C. W. Merrifield, Assessors. The Court came to the conclusion that the *Ballina* had not sufficient stability, and from the evidence given before them it appeared that at sea she would have a freeboard only of from 3 to 4 inches. They found that the owner was to blame for sending the vessel to sea overladen, and they thereupon ordered him to pay a sum of £150.

9. "Blackpool," of Fleetwood. Official Number, 68,622.

Date when last heard of, 20th January, 1880.

Date of Inquiry, 24th and 25th November, 1880.

The *Blackpool* was a sailing ship of 290·96 tons register, built in 1873. In November, 1879, she was surveyed for Lloyd's subsequent to her purchase, the result being that her classification was

suspended, the owners being unwilling at that time to comply with the surveyor's requirements, it being their intention to have her thoroughly repaired on her return from America. In December, 1879, she sailed for Wilmington, U.S., and then loaded a cargo of 2,762 barrels of resin 861,940 lbs. weight. She also carried a deck load of two large spars of timber, and in addition a quantity of other timber. The vessel finally sailed from Smithville on the 20th January, 1880, and has not been heard of since that date. An Inquiry was held at Liverpool before Mr. Raffles, Judge, with Captain H. D. Grant, R.N., and Captain Vaux, Assessors. The Court considered that the *Blackpool* was not in a good and seaworthy condition when she sailed from London. They unhesitatingly condemned the carrying on deck of a heavy load, especially at the season of the year, and they decidedly thought that with the deck load the vessel was overladen. The master seems to have acted on his own responsibility, and the Court could only conjecture that under the above circumstances the *Blackpool* was lost in heavy weather.

10. S.S. "Bruce," of Glasgow. Official Number, 73,828.

Date of Casualty, 27th January, 1882.

Date of Inquiry, 21st and 22nd February, 1882.

The *Bruce* was an iron screw steamer of 45·81 tons register. On the 27th January, 1882, she left Irvine for Port Dundas with a cargo of 100 tons of manganese waste. When about 1½ miles outside the bar the master put the helm up, and on bringing the sea abeam the vessel heeled to starboard and capsized. The boat into which some of the crew managed to get also capsized, and all hands were drowned except the master, who was rescued while clinging to the boat. An inquiry was held at Glasgow before Mr. A. Gilchrist and Mr. W. J. Scott, Justices, assisted by Captain White, R.N., Captain Beasley, and Captain Parish, Assessors. The Court found that the engagement of cargo had been left entirely to the brokers who knew nothing of manganese waste, and took no steps to satisfy themselves as to its nature. The Court thought they should have done so, and should have instructed the master to take steps to prevent it shifting. The Court considered that the vessel, laden with a semi-fluid cargo, and having nothing to prevent it shifting, had not sufficient stability on the voyage, and that when she lurched to starboard the whole cargo must have gone bodily over to leeward. The Court observed that manganese waste is a dangerous cargo to carry without proper means to prevent it shifting.

11. S.S. "Calliope," of London. Official Number, 29,547.

Date of Casualty, 19th or 20th October, 1881.

Date of Inquiry, 12th and 13th January, 1882.

The *Calliope*, an iron screw steamship of 1,062 tons register, left Odessa on the 4th October, 1881, bound to Bremerhaven, with a cargo

of barley. Shortly after passing through the Straits of Gibraltar during a moderate gale the vessel took a heavy list to starboard and subsequently a heavy list to port. The gale increased, and at 3 p.m. on the 19th or 20th the vessel went down by the head, all her crew and passengers were lost, with the exception of one seaman, who managed to lash himself to the top of the chart-room and was picked up by a Spanish vessel. An Inquiry was held at Cardiff before the Wreck Commissioner, assisted by Captains Forster and Castle, Assessors. The Court found that the *Calliope* on leaving Odessa had a freeboard of only 2 feet 6 inches, which they considered to be wholly insufficient for a vessel making a winter voyage. The evidence as to the amount of cargo on board was conflicting, but the Court came to the conclusion that it consisted of 1,717 tons, and that the vessel was therefore overladen. They also found that the shifting boards in the poop and after-hold of the vessel did not comply with the regulations which require that there shall be longitudinal shifting boards from end to end and from top to bottom of each of the holds. The Court blamed the master for not having proper shifting boards put up. They, however, also considered the owner greatly to blame for allowing the load-line of the vessel to remain at 2 feet 6 inches, and thus giving the master an apparent sanction if not authority, to load her down to that point. They therefore condemned him to pay £100 towards costs.

12. S.S. "COLUMBINE," of Hull. Official Number, 56,230.
(See *Official Caution*, page 242.)

13. "COMMODORE," of Dartmouth. Official Number, 19,053.
Date of Abandonment, 31st January, 1881.
Date of Inquiry, 24th and 25th February, 1881.

The *Commodore* was a wooden sailing vessel of 156 tons register. On the 13th January, 1881, she sailed from Cardiff, bound for Lisbon, with a cargo of 264 tons of railway bars. When off the Portuguese coast bad weather set in, during which the cargo shifted, giving the vessel a list to starboard. The water rapidly gained and the ship soon became unmanageable, and finally the master and crew took to the boat and managed to reach Vigo. The *Commodore* foundered very shortly after her abandonment. An Inquiry was held at Cardiff before Mr. R. O. Jones, Stipendiary Magistrate, with Captains Curling and Harland, Assessors. The Court found that the vessel was overladen, and that her freeboard of 22 inches was insufficient. They considered it should have been at least 30 inches for a winter voyage. As regards stowage, the Court remarked that the central spaces should have been tightly wedged to prevent any lateral movement of the cargo, and that this did not appear to have been done. The Court found the owners

responsible for the vessel being overladen and not having sufficient freeboard, and they therefore ordered them to pay a sum of £20 towards the costs.

14. S.S. "CONSTANCE," of West Hartlepool. Official Number, 67,553.
Date of Wreck, 9th February, 1880.
Date of Inquiry, 18th March, 1880.

The *Constance* was a screw steamer of 635 tons. On the 7th February she sailed from Cardiff, bound for Malta, with 1,376 tons of coal on board. A few days after sailing a heavy gale came on, during which the vessel was much injured by a heavy sea, and was thrown on her starboard beam ends. The water came into the engine-room, and the fires were put out. A steamer then bore down to render assistance, but before the crew could leave, the *Constance*, taking a sudden lurch, foundered, and 12 seamen perished. The survivors were picked up by the *Lady Tredegar*, and were landed at Bilboa. An Inquiry was held at Middlesborough before Mr. C. J. Coleman, with Captains Forster and Castle, and Mr. R. C. May, C.E., Assessors. The Court found that the steamer was overladen when she left Cardiff. Her freeboard in salt water would be 2 feet 1 inch, which they considered insufficient.

15. "DANAE," of North Shields. Official Number, 65,456.
Date of Abandonment, 25th December, 1877.
Date of Inquiry, 29th January, 1878.

The *Danae*, an iron screw steamer of 744 tons register, sailed from Copenhagen for London on the 20th December, 1877, with a cargo of about 1,480 tons of wheat. On the 24th she encountered a heavy gale, which increased to a hurricane. On the 25th a list to port, which had already been observed, increased so much that the vessel became unmanageable, and in consequence of the severe injury which she sustained through shipping a heavy sea she was abandoned. An Inquiry was held at Westminster before the Wreck Commissioner, with Captains Forster and Jones as Assessors. The Court attributed the loss of the ship to the following causes:

(1.) *Defective Construction.*—The vessel had two holds, under which were ballast-tanks, which on this occasion (the vessel being laden) were empty. Above the tonnage-deck she had erections of different kinds, with a capacity of above 203 tons, and with a tonnage under the tonnage-deck of only 953 tons. Moreover, the main-deck, which was uncovered, was flanked with solid iron bulwarks, liable to catch any seas breaking over the bows.

(2.) *To overloading.*—Although the load-line was above water on leaving Copenhagen, there was a freeboard of only about 1¾ inches, which the Court considered insufficient for such a vessel.

To the insufficient depth of the shifting boards.—From the evidence before them, the Court gathered that the shifting boards extended

only between 4 and 5 feet from the deck, and they concluded that in consequence of this defect the cargo shifted, and that this was the proximate cause of the casualty.

The Wreck Commissioner observed that cargo in bulk could also be prevented from shifting by having two rows of bulkheads. He also referred to the stowage regulations in force at Montreal and New York, which do not allow any ship exceeding 400 tons to be loaded entirely with grain in bulk, and he suggested that some such regulation might be necessary in the case of large Baltic steamers.

(4.) *To the sluices between the engine-room and main-hold having been left open.*—The Court considered that it was the duty of the master to see that the sluices were in proper working order, and could be readily closed when necessary, and this he neglected to do. The Court found that for the acts and omissions which led to the loss of the vessel the master and owner were almost equally culpable. They had no power to deal with the owner, but as regards the master, they considered him greatly to blame for the overloading; for the insufficiency of the shifting boards; and for not attending to the sluices; and they therefore suspended his certificate for 6 months.

16. S.S. "ELSIE," of London. Official Number, 76,953.

Date when last heard of, 27th February, 1880.

Date of Inquiry, 2nd June, 1880.

The *Elsie* was an iron screw steamer of $759\frac{80}{100}$ tons register. On the 27th February, 1880, she sailed from the Tyne for Hamburg, with a cargo of 1,357 of cargo coal besides bunker coal, and since that date nothing has been heard of her. An Inquiry was held at Sunderland by Messrs. G. R. Booth and W. Wilson, Justices, assisted by Captain White, R.N., and Captain Parfitt, Assessors. The Court found that there was no evidence to show the cause of the loss of the vessel. They considered, however, that her freeboard of 2 feet 2 inches was not sufficient for a vessel on such a voyage; and they call attention to this case as a warning of the serious responsibility incurred by permitting vessels to go to sea so deeply laden.

17. S.S. "EMBLEHOPE," of Newcastle. Official Number, 62,376.

Date of Abandonment, 27th November, 1879.

Date of Inquiry, 12th February, 1880.

The *Emblehope* was an iron screw steamer of 1,255 tons. She sailed from Sulina on the 11th November, 1879, bound to Antwerp, with a cargo of 12,670 quarters of barley and rye. On the 27th, the weather became very stormy, and the vessel was much damaged by a heavy sea which broke over her. The cargo began to shift and the water poured into the engine-room, and the vessel, being on her beam ends, was at length abandoned.

An Inquiry was held at Newcastle before the Wreck Commissioner, and Captains Forster and Castle, Assessors.

The Court found that the master was not to blame for the shifting of the cargo, the vessel having been exceptionally well provided with shifting boards. They considered, however, that having regard to her construction, she had not sufficient stability for the carriage of a full cargo of grain, having too great a breadth in proportion to her beam. They also thought that the engine-room skylight was not properly constructed or sufficiently stayed, looking to the fact that there were no bulwarks to protect it from heavy beam seas. They attributed the casualty mainly, if not entirely, to defective construction.

18. "ESSEX," of London. Official Number, 47,400.

Date when last heard of, 22nd May, 1880.

Date of Inquiry, 30th July, 1880.

The *Essex* was a wooden sailing ship of 1,255 tons register. On the 28th April, 1879, she sailed from Bassein with a cargo of 1,697 tons of rice, bound to Queenstown. On the 7th May she sprang a leak, and having fallen in with the *Amana*, the master and crew of that vessel rendered assistance towards stopping the leak, and on the 14th the two vessels parted company. On the 22nd the *Essex* was met with by the *Eastminster*, but since that date nothing has been heard of her. An Inquiry was held at Westminster by the Wreck Commissioner, assisted by Captains Forster and Castle, Assessors. The Court considered that the *Essex* had too heavy a cargo, considering that she was about to round the Cape of Good Hope in the depth of winter. The Court also found that the cargo was not properly stowed, and that the system of forming ventilating tunnels with the bags of rice without any support to the sides is not a proper or safe system.

That the bags, or at least every alternate tier, should be stowed athwartships or a-burton rather than fore-and-aft or as longers.

That box ventilators are better, and less liable to collapse, and so set the cargo in motion, than ventilating tunnels without supports to the sides.

That although bags of rice, if not filled quite so full, might lie closer and be less liable to shift, there is no reason why, if stowed a-burton, they should not be capable of efficient stowage.

The Court considered that the loss of the vessel was probably due to the quantity of cargo on board, and to the mode in which it was stowed.

19. S.S. "ESTEPONA," of Hull. Official Number, 68,353.

Date when last heard of, 6th October, 1880.

Date of Inquiry, 31st December, 1880.

The *Estepona* was an iron screw steamer of 676 tons register. She left Cardiff on the 6th October, 1880, on a voyage to Marseilles, with a cargo of coal, and since that date nothing has been heard of her.

An Inquiry was held at Cardiff before W. Alexander and H. J. Paine, Esquires, Justices, and Rear-Admiral Pickard and Captain Parfitt, Assessors. The Inspector of Mines considered that the ventilation provided for the cargo in this case, viz., ventilators with movable cowls, was rather more ample than in most cases. Still he was of opinion that safety could only be obtained by the employment of artificial means to secure a thorough current of air over the surface of the coals. The Court found that the stowage of the cargo was defective. The vessel should have been fitted with shifting boards fore-and-aft, both in hold and 'tween-decks. If she had such appliances they were certainly not used. The water ballast tank at least 2 feet 8 inches above the floors, the 'tween-decks which were laid throughout, and the fact that the cargo was stowed close to the upper-deck, tend to show in the opinion of the Court that the vessel's stability in heavy weather would have been questionable. No conclusion could be arrived at as to the cause of the supposed loss of the vessel.

20. "EXPRESS," of London. Official Number, 16,224.

Date of Abandonment, 6th December, 1880.

Date of Inquiry, 14th, 15th, and 31st January, 1881.

The *Express* was an iron screw steamer of 94 tons register. She sailed from London on the 15th November, 1880, bound for Dumfries, with a cargo of 152 tons of patent manure, and above 30 tons of bunker coal. Owing to an accident to the condenser which had to be repaired she did not actually leave the Thames until the 20th. She had to put into Portland owing to stress of weather, and shortly after sailing thence she began to leak, and the pumps became choked. She accordingly put into Falmouth, where she was examined by the Board of Trade Surveyor, and reported to be overladen. Not being detained, however, she proceeded on her voyage, and when off Holyhead the rod of the air pump broke. The master made for the coast of Cumberland, and anchored the vessel off Ravenglass. The master wished to go ashore alone to obtain assistance, but as there was only one boat the crew refused to remain behind, and accordingly all went ashore, leaving the vessel without anyone on board. The next morning nothing was to be seen of the vessel, and it was supposed she had gone down during the night. An Inquiry was held at Westminster before the Wreck Commissioner, with Captains Forster and Ronaldson, and Mr. Adam Miller, Assessors. The Court was of opinion (1) that the vessel had not been shown to be in a seaworthy condition when she sailed from London, and that she was not properly found in boats. (2.) That she was overladen, and that this fact was certainly within the master's knowledge at Falmouth. (3.) That the primary cause of damage was the breaking of the rod of the air pump, and that proper steps were not taken to get the vessel into port to have this repaired. (4.) That the abandonment was not jus-

tifiable, and that the master was not justified in leaving the vessel at anchor without a light. That proper steps were not taken to obtain assistance. The Court therefore suspended the master's certificate for six months. In giving judgment, Mr. Rothery observed that although there did not seem to be any grounds for bringing a charge against the owner, he was nevertheless not altogether free from blame for sending the vessel to sea so deeply overladen.

21. "GALATEA," of Liverpool. Official Number, 58,924.

Date of loss of vessel, 16th November, 1880.

Date of Inquiry, 17th December, 1880.

The *Galatea* was an iron sailing ship of 1,477 tons register. On the 8th November, 1880, she left Birkenhead for Bombay with a cargo of 2,049 tons of coal, and shortly after sailing the weather became very boisterous. On the 16th the vessel was struck by a heavy squall which threw her over on her port-side. While the mizenmast and main topmast were being cut away, the lower main topsail yard of steel fell, making a hole in the deck through which the water poured in. The starboard lifeboat was then launched, and eight of the crew were thus saved, the master and remainder of the crew being lost with the vessel, which shortly afterwards disappeared. An Inquiry was held at Westminster before the Wreck Commissioner, with Rear-Admiral Powell and Captain Comyn, Assessors. The Court found that the casualty was due to an empty space being left in the after-part of the 'tween-decks into which the cargo shifted. They considered that the vessel was very fully laden, and that the cargo was not properly stowed, as there should have been a bulkhead abaft the coals in the 'tween-decks to prevent them from shifting into the empty space aft. The Court also were of opinion that the freeboard of 4 feet 11 inches was hardly sufficient for a vessel of this size, especially for a winter voyage.

22. S.S. "GALEED," of North Shields. Official Number 60,555.

Date when last heard of, 11th March, 1880.

Date of Inquiry, 4th May, 1880.

The *Galeed*, an iron steamship of 604·51 tons register, sailed from the Tyne on the 23rd February, 1880, bound for Aahus and Gothenburg. On reaching the latter port she took in a cargo of 1,200 tons of iron, stowed on a platform consisting of 2½ to 3 inch deals, upon which the iron was placed, the bars being secured from shifting by the pig iron being placed at the top of the bars. The skin of the ship was unprotected, no decks were laid, and the beams were neither tomed nor shored. The vessel left Gothenburg on her return to London, and nothing has since been heard of her. An Inquiry was held at North Shields before Messrs. Hedley and Wait, Justices, assisted by Rear-Admiral Aplin and Captain Comyn, Assessors. The

Court found that there was no evidence to show the immediate cause of the *Galeed* not being heard of, but they considered that the cargo was not properly stowed.

23. "GARMOUTH," of Banff. Official Number, 62,438.

Date when last heard of, 1st November, 1879.

Date of Inquiry, 30th April, 1880.

The *Garmouth* was a wooden vessel of 199·95 tons. On the 1st November, 1879, she sailed from Gijon for Valencia, with a cargo of gas coal wrought from pits of the Maria Louisa Coal Company, situated in Villan. The coal is believed to have been a good deal broken up in loading, by which its explosive character would be increased. Nothing has been heard of the vessel since she left Gijon. An Inquiry was held at Aberdeen before Messrs. J. Cook and J. Cadenhead, Justices, assisted by Captains Curling and Ward, Assessors. The Court find that the hold of this vessel was not properly ventilated so as to insure a system of surface ventilation, there being nothing beyond two small ventilators in the forecastle. The owner pleaded ignorance of the recommendations of the Royal Commission or of the official caution issued by the Board of Trade.

The Court observed, however, that it was his duty, as employing vessels in the coal trade, to have made himself acquainted with these, and they intimated their intention of visiting such neglect with due condemnation in any future case of the kind which might come before them. The Court think that the supposed loss was probably due to explosion through want of surface ventilation, although it might be due to other causes.

24. "GOLDEN SEA," of London. Official Number, 51,454.

Date of Abandonment and Loss, 20th October, 1881.

Date of Inquiry, 13th, 14th, and 15th December, 1881.

The *Golden Sea*, a wooden sailing ship of 1,418 tons register, left Bristol on the 4th October, 1881, in ballast, on her return to St. John's, N.B. On the 14th she encountered a severe gale, during which the pumps became choked with ballast, and the vessel began to list heavily to port. The masts were cut away, but as the water increased the master and crew finally abandoned the ship, which shortly afterwards was seen to founder. An Inquiry was held at Bristol before the Wreck Commissioner, assisted by Captains Harland and Methven, Assessors. From the evidence it appeared that the vessel, which was seventeen years old, being found to be in a leaky condition, was overhauled before leaving St. John's, but not in a very thorough manner, and the Court could not say that she was in a good and seaworthy condition. The Court considered, however, that the "dirt" ballast carried, and consisting of brick, stones, gravel, dirt, &c., was altogether unfit and improper for a voyage

across the Atlantic at the season of the year, and in a vessel with close floors without limbers. This ballast, being saturated with the water which got into the ship, was reduced to mud, and soon choked the pumps. The Court found the master to blame for allowing the vessel to be supplied with such ballast, and suspended his certificate for three months. The Court also found the owner to blame for not seeing that proper ballast was taken, and they ordered him to pay £100 on account of the expenses of Investigation.

25. S.S. "GREECE," of Liverpool. Official Number, 45,170.

(See *Official Caution*, page 243.)

26. S.S. "HARDWICK," of West Hartlepool. Official Number, 67,543.

Date of Wreck, 1st September, 1880.

Date of Inquiry, 8th December, 1880.

The *Hardwick* was an iron screw steamer of 618 tons register. On the 21st August, 1880, she left Odessa with a full cargo of barley, bound for Bristol. After passing Gibraltar the vessel was observed to have a list to starboard, which increased, until having shipped a very heavy sea, she heeled over with her rail under water, and subsequently turned bottom upwards. Only one of the crew survived, keeping himself afloat until he was picked up by a Spanish vessel. An Inquiry was held at West Hartlepool before the Wreck Commissioner, assisted by Captain White, R.N., and Captain Harland, Assessors. The Court came to the following conclusions:—(1.) That the shifting boards, going from the upper deck to the hold beams, were not carried sufficiently low. (2.) That the vessel was very deeply laden, having a freeboard of only 1 foot 7 inches. (3.) That looking to the construction of the vessel as a well-decked ship, the height of her empty ballast tanks, and her low freeboard, she had not sufficient stability, and it is to these combined circumstances that they attribute her loss.

27. "IMPERO," of Halifax, N.S. Official Number, 64,903.

Date of Abandonment, 8th November, 1880.

Date of Inquiry, 30th and 31st December, 1880.

The *Impero*, 712·23 tons register, sailed from Philadelphia on the 22nd October, 1880, bound for Limerick, with a cargo of 5,257 quarters of maize in bulk. On the 2nd November the vessel was struck by a heavy squall, throwing her on her beam-ends and causing the cargo to shift. During the gale which continued considerable damage was done, and the pumps becoming choked it was decided to abandon the vessel. The master and crew were picked up on the 17th November by the barque *Karnak*. An Inquiry was held at Liverpool before Mr. Raffles, Stipendiary Magistrate, with Captains Castle and Harland, Nautical Assessors.

The Court considered that the *Impero* was very fully laden for a winter voyage across the Atlantic. They thought the cargo was not properly secured. The vessel had been fitted with three shifting boards between the fore and main-hatches extending from the beams about 2 feet 6 inches. They were 1¼ to 1½ inch boards, and nailed double on each side of the stanchions and trimmed off at an angle of about 45° and cleated top and bottom. In the way of the main-hatch they were shored from the bilge. There was no lower deck laid. In the 'tween-decks there were shifting boards fitted from the beams to the upper-deck secured in a similar manner. These shifting boards proved insufficient to withstand the heavy weather which might have been anticipated at such a season of the year. Neither was the cargo properly trimmed, as from 20 to 30 tons had to be shifted aft, leaving one empty space in the fore-hold. When the shifting boards gave way there was nothing to prevent the grain from shifting and eventually settling. Had there been some of the cargo shipped in bags placed over the grain in bulk this might have been prevented. The Court found the abandonment justifiable.

28. S.S. "JONES BROTHERS," of Newport (Monmouthshire). Official Number, 63,389.

Date of Casualty, 27th January, 1880.

Date of Inquiry, 12th March, 1880.

The *Jones Brothers*, an iron screw steamer of 481 tons register, sailed from Bilboa on the 27th January, 1880, bound to Newport, with a cargo of iron. Shortly after sailing, water was observed to be coming out of the port furnace, and as it increased the engineers were about to suggest to the master that the vessel should not go to sea, when an explosion occurred in the engine-room, causing fatal injuries to the chief engineer and two others. An Inquiry was held at Newport before the Wreck Commissioner, assisted by Captains W. Parfitt and R. Wilson, and Mr. J. R. Ravenhill, C.E., Assessors, when the Court came to the following conclusions:—

1. That there was no reason to suppose that the boilers were not properly tested and examined in June, 1879, but that Lloyd's surveyor was not justified in allowing the boilers to be worked at a pressure of 42 lbs. after testing them by hydraulic pressure up to 50 lbs. only.

2. After February, 1879, the owners ceased to employ a superintending engineer to attend to their steamers, and each chief engineer was expected to look after his own engines and boilers. Between June, 1879, and January, 1880, four chief engineers were successively appointed to the *Jones Brothers*. The Court find that proper measures were not taken by the engineers to ascertain the thickness of the plates and the condition of the boilers after July, 1879.

3. That the owners of the *Jones Brothers* were not justified, under the circumstances, in leaving the superintendence of the engines

and the boilers solely to their chief engineers, more especially after June, 1879; but knowing nothing of the proper management of steamers themselves, they should have employed a superintendent, or consulting engineer, or some competent and independent person to examine the machinery and boilers from time to time on the return of the vessel to this country.

4. That the owners did not take fit and proper measures to ensure the safety of the *Jones Brothers* and her machinery.

5. That the boilers were on the 27th of January, 1880, worked at too high a pressure, considering the state in which they were.

6. That the pressure in the boilers was about 33 lbs. when the explosion occurred.

7. That the explosion was due to the total neglect to which the boilers had been subjected for some time previously. The Court held that the owners were to blame, and they condemned the managing owner to pay a sum of £100 *nomine expensarum*.

29. S.S. JOSEPH PEASE, of London. Official Number, 73,728.

Date when last heard of, 30th September, 1879.

Date of Inquiry, 9th July, 1880.

The *Joseph Pease* was an iron screw steamer of 1,170 tons register. On the 30th September she sailed from New York, bound to Marseilles, with a crew of 26 hands all told, and has not been heard of since. An Inquiry was held at Westminster before the Wreck Commissioner, assisted by Rear-Admiral Aplin, Captain Beasley, and Mr. C. W. Merrifield, Assessors. The Court found that there was nothing to show that the vessel was not in a good condition, or that the cargo was improperly stowed. In connexion, however, with the fact that the vessel had a very small margin of stability, they notice that whilst the grain in the fore and main lower-holds was in bulk, that in the fore 'tween-decks was in bags, which was so stowed that there was no security against their falling into the empty space forward, if the vessel got into a heavy sea. Also, that although there were double rows of stanchions from the upper deck to the hold, below the beams there was only a single row of stanchions, and that if the shifting boards extended below the hold-beams it would be very difficult if not impossible to secure them effectually. The Court considered that, having regard to her construction, and to the height of the water ballast tank in her fore-hold, the vessel as laden had not sufficient stability, and that owing to this cause she probably foundered in bad weather.

30. S.S. KENSINGTON, of London. Official Number, 77,907.

Date when last heard of, 5th November, 1879.

Date of Inquiry, 22nd March, 1880.

The *Kensington* was an iron screw steamer. On the 5th November she sailed from the Mersey, bound for Havannah, with cargo and

bunker coal on board weighing 2,038 tons. On the afternoon of that day the pilot left her when off the Bar Light, and since that time nothing has been heard of her. An Inquiry into the circumstances of the supposed loss of this vessel was held at Westminster before the Wreck Commissioner, with Captains Ward and Ronaldson, and Mr. C. W. Merrifield, Assessors, when the Court came to the following conclusions:—(1.) That the load-line was not placed in the proper position on the ship's side. It seems to have been placed at 4 feet from the deck, without any calculation being made as to the depth to which the vessel might be safely laden. (2.) That the vessel was overladen, her freeboard being 4 feet 6 inches. (3.) The cargo was properly stowed and trimmed. (4.) The means for ventilation were not sufficient or properly placed, looking to the nature of the cargo. The vessel was laden with "Arley" gas coals, and with gas coals from Pearson and Knowles' Mines, both of which coals appear to be of an inflammable nature. She had four pairs of ventilating bollards, which would be kept closed in bad weather. There was also ventilation forward of the engine-room and in the after-hold, but none in the fore-hold, and there was no space left over the coals in the main and after 'tween-decks to allow of a current of air. (5.) That looking to the construction of the vessel and depth of loading, and the nature of the cargo, she had not sufficient stability. The vessel had a beam of 33 feet, as against a depth of hold of 22·4 feet, and she had also a deck-house amidships. The Wreck Commissioner notices that the question of stability never seems to have been considered in building the vessel, nor does it seem to have been the practice to make calculations to show to what depth a vessel could safely be loaded. The Wreck Commissioner suggests that there is great room for improvement in this respect. The Court find that the owners and agents knew of the placing of the load-line and of the overloading, but they believed that the owners erred from want of knowledge rather than from want of care. They considered that the supposed loss of the vessel was due either to her having been swamped, or overturned, owing to insufficient stability, or to an explosion of coal gas on board.

31. "KILLEENA," of Glasgow. Official Number, 71,737.

Date of Abandonment, 10th October, 1880.

Date of Inquiry, 23rd and 24th November, 1880.

The *Killeena*, an iron barque of 795 tons register, left New York on the 26th of August, 1880, on a voyage to Liverpool, with a cargo of 43,750 bushels of corn and 789 bales of cotton. Shortly after the vessel had sailed the cargo shifted on two or three occasions, and had to be re-adjusted. On the 6th October a gale came on, during which the vessel was thrown on her beam ends, and lost her main and foremasts. The cargo completely shifted, and the master finally determined to abandon the ship, and he and the crew were accord-

ingly received on board the *Freeman Dennis*. The *Killeena* continued afloat, and was subsequently boarded by the boatswain and three seamen of the *Beatrice*, by whom she was taken to Falmouth with the assistance of the steamship *Leipsic*, arriving there on the 11th November. An Inquiry was held at Glasgow before the Wreck Commissioner, assisted by Rear-Admiral Aplin and Captains C. Y. Ward and Parfitt, Assessors. The Court found that the cargo was not properly stowed according to the New York rules. Although the vessel was over 500 tons she carried the grain wholly in bulk, and more than 12,000 bushels were stowed in one compartment. Moreover, the wooden stanchions or uprights to which the shifting boards were nailed were not secured at top and bottom, and the shifting boards were not carried to the upper-deck. The Court considered that they could not exonerate the master from his responsibility for the defective stowage, and they also found him in default for prematurely abandoning the ship. They therefore suspended his certificate for six months.

32. "LEBANON," of St. John's, N.B. Official Number, 59,281.

Date of Abandonment, 17th April, 1880.

Date of Inquiry, 15th May, 1880.

The *Lebanon*, a wooden vessel of 889·16 tons register, loaded a cargo of 1,200 tons of pig iron at Troon, in March, 1880. The cargo was stowed in the following manner, viz., there was a ground tier or stack of iron extending from within 3 feet of the fore-peak bulkhead to 4 feet abaft the mizenmast and was stowed on the skin of the ship, and from wing to wing. The stack was built as follows, viz., seven bars high; the first bar was stowed fore-and-aft, "open," with the ends locked; the second bar was stowed single chequer; the first, third, and fifth bars were stowed in similar manner to each other; and the second, fourth, and sixth bars were also stowed similar to each other; the seventh bar was stowed fore-and-aft, close or solid; the height of the ground tier was about 25 inches; the second tier, or stack, extended from eleven feet abaft the fore-end of the ground tier to within seven feet of its after-end. There was, however, no second tier in the square of the main hatchway; the second tier was similar to the ground tier, with the exception that they were only six bars high, and the sixth bar was solid; the height of the second tier was about two feet; these two tiers contained 500 tons of iron, and stood about four feet high. When the 500 tons had been stowed, the captain ordered the stevedore to take in 350 tons more, and throw them down into the hold without stowing it, and 200 tons were thrown down the main hatchway, and 150 tons down the after hatchway. This was not stowed, and remained loose in two heaps. In addition, there were 20 tons of broken iron put loose under the fore-hatch. On the 'tween-deck beams (there being no deck laid) were stowed 350 tons of pig iron in the following manner,

viz., on the beams were placed planks (not close to each other), and not nailed or secured to the beams, and on them was stowed the iron, extending from the after-part of the fore-hatch to abaft the mizen-mast. There was no iron stowed abreast of the hatchways. It was six bars high, and stowed similar to the second tier in the lower hold, and stood about two feet high. The cargo was secured in the following manner, viz., at every beam, both in the lower hold and 'tween-decks, there were four stanchions on each side of the permanent stanchion. These extra stanchions were of three-inch deal, and cleated top and bottom.

On the 30th March the vessel left Troon for Montreal. Shortly after sailing she met with strong north-westerly winds, and began to labour and roll, causing the cargo to shift on the 'tween-decks, and on the 14th April she was found to be leaking in every part. On the 17th it was decided to abandon the vessel, and the crew were taken on board the *Mary*, of St. John's. An Inquiry was held at Liverpool before Mr. Raffles, Stipendiary Magistrate, assisted by Captains Hight and Forster, Nautical Assessors. The Court found that the cargo was not properly stowed, and might have been better secured. They attributed the labouring and straining of the vessel, when off Inishtrahull, to the cargo not having been properly distributed. They considered that the master should thereupon have taken her into the nearest port, and that even later on he should have attempted to reach a port of safety, as he had a fair wind for the purpose.

33. "LLANEDARNE," of Cardiff. Official Number, 77,199.

Date when last heard of, 1st December, 1879.

Date of Inquiry, 12th April, 1880.

The *Llanedarne* was an iron screw steamer of 673·29 tons register. On the 17th November, 1879, she sailed from Nicolaieff with a cargo of 6,400 quarters of linseed in bulk, bound for Western Europe. At Gibraltar she took in 80 tons of bunker coal, and sailed for Dunkirk, since which nothing has been heard of her. An Inquiry was held into the case at Cardiff before Mr. A. R. Valpy, assisted by Captains Hight and Parfitt, Assessors. The Court were satisfied as to the condition of the *Llanedarne*, but they considered that 2 feet ⅝ of an inch was not a sufficient freeboard for a voyage at the season of the year. They could not say the vessel was lost through overloading, but they observe that a ship so constructed, with a well-deck with solid bulwarks, capable of holding at least 100 tons of water, in case the ports were not open at the time, would be unequal to contend against exceptionally heavy weather. The Court notice the fact that not only had this vessel carried similar cargoes under similar conditions, but that other ships built on the same lines had done the same. They nevertheless strongly condemn the practice of loading vessels of this class to the utmost possible limit, relying apparently on the continuance of ordinary weather.

34. S.S. "LLANISHEN," of Cardiff. Official Number, 72,520.

(See *Official Caution*, page 245.)

35. S.S. "LUFRA," of West Hartlepool. Official Number, 67,529.

Date of Abandonment, 29th November, 1879.

Date of Inquiry, 13th February, 1880.

The *Lufra* was an iron screw steamship of 878 tons net register. On the 23rd November, 1879, she left the Tyne on a voyage to Genoa, having a cargo of 1,773 tons of coal besides 198 tons of bunker coal. She encountered very strong gales, and on the 28th commenced making water rapidly. The fires were put out, the boats were carried away, and on the 29th the vessel lying on her beam ends it was decided to abandon her, and the master and crew escaping by means of a raft were picked up by the *Gratitude*. An Inquiry was held at Newcastle before the Wreck Commissioner, assisted by Captains Forster and Castle, Assessors. The Court considered that, having regard to the season of the year and the nature of the intended voyage, to the fact that the vessel had somewhat less than 3 feet of freeboard, and that she was poop-decked, the *Lufra* was very greatly overladen; on leaving Howden Dock, although constructed to carry 2,000 tons, her total deadweight, exclusive of the engines, was on the occasion of this voyage 2,036 tons. Seeing that the pumping out of the after-tank gave the vessel a list, she should have been trimmed rather by taking some of the coal out of the poop than by refilling the ballast-tank. Considering the construction of the vessel, her high centre of gravity, and her consequent lack of stability, she was not qualified to carry a full cargo, or indeed such a cargo as she had on board. The Court think the leakage was due to the weight of the cargo, and bunker coal in the poop sinking her below the tonnage or main-deck for a great part of her length, and they attribute the loss of the vessel to her instability and to her being too deeply laden.

36. "MAGIC," of Banff. Official Number, 74,184.

Date when last heard of, 24th November, 1879.

Date of Inquiry, 10th March, 1880.

The *Magic*, a schooner of 152 tons register, sailed from Newport, Mon., on the 23rd November, 1879, with a cargo of coals, bound for Lisbon. She left Penarth Roads on the 24th, and since then nothing has been heard of her. An Inquiry was held into the case at Newport before the Wreck Commissioner, assisted by Captains Parfitt and Wilson, Assessors. The most important question before the Court was that regarding the ventilation of the vessel. The coal of which the cargo consisted came from the Newport Abercarne Black Vein Steam Coal Colliery, and being newly wrought would

give off great quantities of explosive gas. Every care seems to have been taken in the shipment of the coal to prevent an explosion, and the officers were duly cautioned as to the nature of the cargo. To provide for the ventilation there were, in addition to the main hatchway, two small hatchways fore-and-aft. In the event of these hatchways being closed through stress of weather there would be no ventilation at all from the hold. A small ventilator had been fixed on the fore-hatchway, but this would hardly be sufficient to keep the hold properly ventilated, and the Court considered, therefore, that the vessel had not been provided with good and efficient ventilation, considering the nature of the cargo. The Court, however, could not say that there was anything to account for the vessel's disappearance.

37. S.S. "MARLBOROUGH," of Hull. Official Number, 79,461.
Date when last heard of, 29th November, 1879.
Date of Inquiry, 19th March, 1880.

The *Marlborough* was an iron screw steamer of 1,498 tons register. On the 29th November, 1879, she sailed from Cardiff, bound to Genoa, with a cargo of coal, and since that date nothing has been heard of her. An Inquiry into the case was held by the Wreck Commissioner, assisted by Captains Ronaldson and Ward, and Mr. C. W. Merrifield, Assessors. The Court came to the following conclusions:—

1. That the load-line was not in a proper position either at 4 feet or even at 4 feet 6 inches below the upper deck, and that it was so placed by the order and with the knowledge and sanction of the managing owner.

2. That the vessel was overladen with the knowledge and sanction of the managing owner. On this last voyage she carried 2,511 tons of cargo coal and 859 tons of bunker coal. It appeared from the evidence that when deeply laden, as she had been on previous voyages, she had behaved badly at sea even in fine weather.

3. That the vessel was undermanned with the knowledge and sanction of the managing owner, having only a crew of 25 hands, including all the engine-room hands.

4. That looking to the form and dimensions of the vessel, the depth to which she was loaded, and the nature of the cargo which she had on board, she had not sufficient stability for a winter, or for any voyage. No steps whatever seem to have been taken to calculate the stability of the vessel, the position of her meta-centre, the centre of gravity, or to what extent she could be safely loaded.

The Court condemned the reckless conduct of the owner in sending the vessel to sea in so unseaworthy a condition, and they ordered him to pay the sum of £250 *nomine expensarum*.

38. S.S. "MEREDITH," of London. Official Number, 65,589.

Date of Casualty, 29th March, 1880.

Date of Inquiry, 19th August, 1880.

The *Meredith* was a screw steamer of 634·30 tons register. On the 29th March, 1880, she arrived at Gravesend from the Tyne, and as she was about to proceed to London the chief engineer instructed the second engineer to open the main stop-valves upon the boilers. Whilst the second engineer was engaged in doing this there was a rush of steam and boiling water consequent upon the sudden lifting of one or both of the safety-valves, and causing injuries to him of which he died. An Inquiry was held into the case at Middlesborough before Mr. Coleman, the Stipendiary Magistrate, assisted by Captain Ward and Mr. R. C. May, C.E., Assessors. The Court found that the safety-valves did not appear to have been in good order, that the lifting gear of one of the safety-valves worked so stiffly that it failed to be of use, and that the covers of the boxes were most inefficiently fastened. They also find that the pressure gauges were not reliable. The Court are of opinion that the owner should have informed himself as to the amount of pressure on the safety-valve, and also that Palmer's Shipbuilding Company (who had been instructed to repair the vessel) did not make a thorough inspection of the boilers, and were not justified in neglecting to examine the safety-valves when the vessel was in their hands. The Court considers that the cause of the casualty was—

(1.) Undue pressure in the boilers, and probable great variation of pressure in the one as compared with the other; and (2) to the safety-valves hanging up and then becoming suddenly released and opening to such an extent as to cause the water to mix with the steam and rush out so violently that the escape pipe failed to relieve the pressure, and thus the imperfectly fastened cover of the valve box had such a strain brought upon it as to blow out the substance forming the joint, partially raise the lid, and allow of the escape of steam and boiling water; and they blame the chief engineer for his neglect in not ascertaining the load per square inch on the safety-valves, and in not getting up steam to lift the load on the safety-valves to ascertain whether they and the gear connected with them were in good working order.

39. "MERTON," of Faversham. Official Number, 12,927.

Date when last heard of, 8th November, 1879.

Date of Inquiry, 17th August, 1880.

The *Merton* was a schooner of 93 tons register. On the 8th November, 1879, she sailed from West Hartlepool for Ramsgate, with a cargo of 156 tons of coal, and since that date nothing has been heard of her. An Inquiry into the case was held at

Westminster before the Wreck Commissioner, assisted by Captain H. D. Grant, R.N., and Captain Curling, Assessors. The Court found that there were no means of ventilation except through the hatchways, and they considered, therefore, that the vessel was not properly ventilated. Whilst, however, insisting in strong terms on the necessity for providing adequate ventilation apart from the hatchways in the case of coal-laden vessels, as recommended by the Royal Commission, the Court observe that the coal which was carried by the *Merton*, and which was taken from the Auckland Park Colliery, did not appear to be of so gaseous a nature as to cause danger of explosion. No risk was, therefore, likely to arise from the want of ventilation. The Court could not express any opinion as to the probable cause of the supposed loss of the vessel beyond saying that it did not seem to be due to any default or neglect of the owners.

40. S.S. "MILDRED," of Whitby. Official Number, 81,206.

Date when last heard of, 28th September, 1880.

Date of Inquiry, 10th February, 1881.

The *Mildred* was an iron screw steamer of 882 tons register. She left New York on the 28th September, 1880, bound for Marseilles, with a cargo of wheat, and has not since been heard of. An Inquiry was held at Westminster before the Wreck Commissioner, assisted by Rear-Admiral Pickard, Captain Castle, and Mr. May, C.E., Assessors. It appeared that the *Mildred* had on board 60,702 bushels of wheat, of which 50,503 were in bulk and 10,199 in bags. She had also 300 tons of bunker coal, making in all 1,927 tons of deadweight, her freeboard being 2 feet 5½ inches. The Court observed, moreover, that the *Mildred* was a "well-decked" ship, and they commented upon the danger to which, as appeared from evidence, such vessels are exposed in a voyage across the Atlantic. The Court came to the conclusion that the fact of the *Mildred* not having been heard of is due to her having been too deeply laden, having regard to her construction and to the well-deck with which she was fitted.

They also considered that vessels of a similar type, and with a well-deck, are not, if deeply laden, adapted for the Atlantic trade, more especially in the winter season.

41. "NORSEMAN," of Glasgow. Official Number, 71,717.

Date when last heard of, 26th December, 1879.

Date of Inquiry, 26th February, 1880.

The *Norseman*, a steamer of 93·62 tons register, sailed from Workington on the 26th December, 1879, bound for Bowling, in the Clyde, with a cargo of 171 tons 3 cwt. of steel rails. Nothing has since been heard of the vessel. An Inquiry was held at Glasgow, before Messrs. Robertson and McCulloch, Justices, assisted by

Captains Beasley and Curling, and Mr. May, C.E., Assessors. The Court were of opinion that the master did not act prudently in putting to sea on the 26th December, knowing that bad weather was prevailing, and with the barometer falling. They also considered that the cargo was not properly stowed, there being a space of from 8 to 10 feet in length from the ends of the cargo to the two bulkheads of the hold, and a space of 4 feet in depth from the top of the cargo to the underside of the deck. No means were taken for securing the cargo by shoring or otherwise, although it was admitted in evidence that shoring would have been the proper precaution. The Court considered that the vessel must have been lost when off the Mull of Galloway, during heavy weather, in which the cargo probably shifted.

42. "Othere," of London. Official Number, 55,447.

Date of Abandonment, 2nd April, 1880.

Date of Inquiry, 7th May, 1880.

The *Othere* was a wooden sailing ship of 647 tons register. On the 27th March, 1880, she left the Tees, bound for Philadelphia, with a cargo of 900 tons of pig iron. Shortly after sailing she met with heavy weather, and was found to be making water; and on the 2nd April, the master and crew abandoned the vessel, and were taken on board the barque *North Riding*. An Inquiry was held at Middlesborough before Mr. C. J. Coleman, assisted by Captains Beasley and Ward, Assessors. The Court found that, considering the nature of the cargo, the materials she was built of, and her age, the vessel was much overladen, and for this they blame the master. They also find him in default for going to sea, knowing that only one pump was in working order; for neglecting to have the ballast ports properly caulked, and for subsequently prematurely abandoning the vessel. They therefore suspend his certificate for six months.

43. "Pampero," of Swansea. Official Number, 48,833.

Date of Casualty, 23rd November, 1881.

Date of Inquiry, 16th, 17th December, 1881; 10th, 11th January, 1882.

The *Pampero*, an iron barque of 588 tons register, sailed from Liverpool on the 28th October, 1881, for New Zealand, with a general cargo. Shortly after, a strong gale came on, and the vessel began to labour heavily. The crew then demanded that she should be put back, alleging that she was overladen. On their refusing work the master returned to Queenstown, when the men were prosecuted and sentenced to six weeks' imprisonment. The *Pampero* then again proceeded on her voyage. From the 14th November she encountered a succession of heavy gales, in which she sustained considerable damage. The master had in the meantime retired to his cabin on the plea of illness, the navigation being

left practically to the first mate, who, on a persisted application from the crew, decided to put back and stand for the Lizard. On the 23rd the mainmast broke and went overboard, carrying with it four men who were aloft securing the main topsail yard, and two of these were drowned. On the 24th November the *Pampero* arrived in Mounts Bay, and was shortly afterwards grounded at Penzance.

An Inquiry was held at Swansea before the Wreck Commissioner, assisted by Vice-Admiral Powell, C.B., Captain Curling and Captain Kennedy, Assessors. The Court found that the *Pampero* carried a cargo of 1,062 tons, 719 tons of which was deadweight, consisting chiefly of iron goods, her cargo being 64 per cent. above the gross tonnage. On the vessel's return from a previous voyage to Hong Kong, in 1879, her load-line was altered from 3 feet 5 to 3 feet 6, and subsequently, before her sale, it was again lowered to 3 feet 8. Before the vessel sailed from Liverpool, the owner's overlooker raised the load-line about 3 inches above where it had been placed. The Court considered that the vessel was overladen and had not sufficient freeboard, and they found the owners responsible for the act of their agent in raising the load-line, obviously for the purpose of putting in more cargo, with the result that the vessel was sent to sea overladen. The damage sustained, though partly due to stress of weather, was also attributable to the great weight of cargo which the vessel had and the depth to which she was sunk, which caused her to roll more heavily than she would have done, and led to the straining and parting of the lanyards, and to the mast going over the side. The Court therefore condemned the owners to pay £100. From the evidence given it appeared that the master remained below from the 14th to the 24th November, being at the time in a state of intoxication. The Court found that his misconduct had contributed to the casualty, and they cancelled his certificate.

44. "PENELOPE TUTTON," of Swansea. Official Number, 66,319.

Date of Abandonment, 20th January, 1881.

Date of Inquiry, 3rd and 4th March, 1881.

The *Penelope Tutton* was a wooden vessel of 198·88 tons register, built in 1872. On the 3rd December, 1880, she sailed from Tucacas with a cargo of 391 tons of copper ore. On the 4th January she encountered a heavy gale, which increased to a hurricane. Gales of more or less violence continued until the 19th, and the vessel being seriously damaged by the heavy seas which struck her, the master and crew finally abandoned her and were taken on board the *Hedwig*, of Bremen. An Inquiry was held at Swansea before Mr. J. C. Fowler, Stipendiary Magistrate, with Captains Curling and Kennedy, Assessors. The Court came to the following conclusions. That when the vessel left Tucacas her equipment was defective, as she had no spare spars on board. That considering her age, build, and tonnage, and the nature of the voyage, she ought not to have taken so heavy

a deadweight cargo as 390 tons of copper ore. The new freeboard was not sufficient, being scarcely 2¼ inches to each foot depth of hold. They thought that the master acted indiscreetly in loading his vessel so deeply under the circumstances, and they censured him accordingly. The Court also considered that the owner could not altogether divest himself of responsibility for the loading of a ship, though she might be in a foreign port. In this case he ought to have specifically advised his captain to secure a greater freeboard in winter than in summer. The Court, moreover, expressed an opinion that in vessels engaged in ore trade some difference of load should be insisted upon during the winter months with a view to safety of life and property.

45. "PENWITH," of Hayle. Official Number 68,866.

Date when last heard of, 11th May, 1880.

Date of Inquiry, 15th and 17th January, 1881.

The *Penwith*, a sailing ship of 276 tons register, sailed from Cardiff for Rio Grande do Sul on the 11th May, 1880, with a cargo of 422 tons of South Wales steam coal from the collieries of the Ocean Steam Coal Company, a coal which is known to give off explosive gas very freely, but which is not liable to spontaneous combustion. Nothing was heard of the vessel subsequent to her sailing. An Inquiry was held at Cardiff before Mr. R. O. Jones, Magistrate, with Rear-Admiral Pickard and Captain Comyn, Assessors. The Court observed that such a cargo as that carried would require careful ventilation, and the Government Inspector of Mines suggested that this could only be properly done by the use of a fan or similar apparatus. In the case of a ship of the size of the *Penwith* it would he thought be sufficient to have two pipes placed at one end of the hold for introducing air, and two at the other end for its escape, the escape pipe being connected with the fan. In the *Penwith* there were no means of ventilation except the hatchways, the ventilation and other matters had been left to the builders and the master, but the Court thought the owners were not free from blame for so entirely neglecting their own responsibility. The vessel was also exposed to danger from the manner in which the cargo was stowed and trimmed, rendering it liable to shift in heavy weather; midships a space large enough to hold 40 tons of coal was left, another space being left forward. The Court found that there was no evidence from which an opinion could be formed as to the cause of the supposed loss of the vessel.

46. "PERUVIAN," of Liverpool. Official Number, 73,989.

Date of Abandonment, 12th December, 1879.

Date of Inquiry, 14th February, 1880.

The *Peruvian*, a sailing vessel of 1,059·73 tons register, loaded a cargo at Dublin in November, 1879, consisting of 1,060 tons of old

rails and 90 tons of scrap iron, which was stowed in the following manner; 600 tons were placed in the lower hold, commencing at the fore part of the fore hatchway, and extending to the upper part of the after hatchway. It went across the ship from wing to wing, and was stowed on carlines, raising the bottom of the iron about 8 inches above the ceiling, while at the wings it was 1 inch from the skin of the ship. On the between-deck beams 460 of the rails were stowed to a height of about 3½ feet, extending each way to within 5 feet of the extremities of the bottom of the cargo in the lower hold.

On the between-deck beams, in addition to the permanent midship stanchions, there was a stanchion on each side of the vessel under each beam of the deck, above and resting on a board laid upon the iron, and these extra stanchions were secured by cleats at top and bottom. The stanchions or shores in the lower hold from the top of the iron there to the between-deck beams were placed and secured in a similar manner, but were not put up until after the cargo of 460 tons had been stowed on those beams, thus causing a heavy strain on the beam fastenings and upper works of the ship. On the 29th November, 1879, the vessel left Dublin for Philadelphia. In the beginning of December she encountered a succession of heavy gales, in which part of the cargo broke adrift, and the masts were carried away. The vessel being thus disabled she was abandoned on the 12th December, the crew being rescued by the *Acadian*. An Inquiry was held at Dublin before Mr. O'Donel, Magistrate, assisted by Captains Forster and Ward, Assessors. The Court found that the cargo was not properly stowed, nor were the between-deck beams properly trimmed and supported, the cargo not being placed sufficiently high in the vessel, which caused the centre of gravity to be too low, and the shores under the between-deck beams not being put in their places until after 460 tons of iron had been stowed on the beams. The centre of gravity being too low led to the vessel's rolling and straining excessively in the rough weather, and the straining and leakage were aggravated by the improper shoring of the between-deck beams. The Court exonerated the master from blame.

47. "Phœbe Lewis," of Newport. Official Number, 76,313.

Date of Abandonment, 1st April, 1881.

Date of Inquiry, 1st and 2nd June, 1881.

The *Phœbe Lewis* was a wooden vessel of 99·63 tons register. She left Newport on the 28th March, 1881, bound for Gijon, Spain, and having a cargo of 175 tons 4 cwt. 13 lbs. of steel rails, and 4 tons 15 cwt. of points and crossings. On reaching the mouth of the English Channel the vessel, which was rolling and labouring much, was struck by a heavy sea, and the cargo began to shift in the hold, subsequently it was found that the shores were all down, and the

cargo was completely adrift and could not be secured. As the vessel was evidently settling down, the master and crew abandoned her, and were taken on board the *Edgeworth*. An Inquiry was held at Cardiff before Mr. R. O. Jones, Stipendiary Magistrate, assisted by Captains Forster and Castle, Assessors.

The Court found that considering the nature of the cargo, the time of the year, and the nature of the voyage, the *Phœbe Lewis* was very much overladen. They also considered that although the cargo was properly stowed it was not properly secured, hence it shifted, and the vessel was consequently strained and made water. The Court found the master in default for neglecting to see that the vessel was not overladen, and that the cargo was properly secured, and they suspended his certificate for six months.

48. S.S. "PROMETHEUS," of Sunderland. Official Number, 68,949.
Date when last heard of, 1st December, 1879.
Date of Inquiry, 17th February, 1880.

The *Prometheus*, an iron screw steamer of 1,043 tons register, sailed from Cardiff on the 1st December, 1879, with a cargo of coals, bound to Genoa; and since that date nothing has been heard of her. An Inquiry was held at Newcastle before the Wreck Commissioner, assisted by Captains Forster and Castle, and Mr. Ravenhill, C.E., Assessors. The Court thought that the loss of the steamer was probably due to the officer in charge having held on for too long a time on his course with a beam wind and sea, which may have caused the cargo to shift. Also that, although the vessel might advantageously have had more beam in proportion to her depth, she might nevertheless, if properly handled, have performed the voyage in safety. The Court found that the vessel was not properly ventilated, as she should have had two ventilators to each hold, one in the fore part and one in the after part, piercing the upper deck, and with a clear space under the deck between the ventilators, in order that there might be always a free current of air passing over the surface of the coals in the 'tween-decks. The Court did not, however, think the loss of the vessel was due to the want of proper ventilation, the cargo being small coal, from which very little gas would be given off. The Court notice this as another instance of what appears to be a not unfrequent occurrence, that vessels are often lost in their first command.

49. S.S. "RATHMORE," of Liverpool. Official Number, 78,831.
Date when last heard of, 3rd January, 1880.
Date of Inquiry, 16th and 23rd July, 1880.

The *Rathmore* was an iron screw steamship of 1,382 tons register. On the 3rd January, 1880, she sailed from Cardiff for Bombay with a cargo of coal, and nothing has been heard of her since that date.

An Inquiry was held at Westminster before the Wreck Commissioner, with Captains Forster and Curling, and Mr. Merrifield, Assessors. The Court found that no means were taken to ascertain the stability of the ship, and the position at which the load-line should be placed; that looking to the construction of the vessel, and the depth to which she was laden, it was very doubtful whether she had sufficient stability for a winter voyage; that she had not sufficient freeboard for a voyage across the Bay of Biscay; that her load-line should not have been placed at 4 feet. The Court think that these points should engage the serious attention of owners before sending a vessel to sea. The ventilation of the vessel was as follows:—

She had five cowl ventilators, of which four went down to the lower holds, one of them to each hold. She had also 12 ventilating bollards, her masts were hollow, having openings into the lower holds and the 'tween-decks, and she had a trunk or shaft ventilator of considerable size from the tank, forward of the engine-room. In addition to all this she had immediately beneath the upper-deck a box ventilator, about 6½ inches square, running the whole length of the 'tween-decks, with the two ends closed up, but with the openings at every 8 feet, and leading finally into the main funnel at about 10 or 12 feet up.

The Court observe, that although this system might be well suited for the carriage of cattle (for which it was provided), it was not clear that it was well suited for coal cargoes, having regard to the danger of explosion by the gas not being sufficiently diluted before it passed into the funnel, and to the danger of its there coming in contact with a flame or a burning cinder.

The Court considered there was no evidence to show what was the cause of the vessel not being heard of.

50. "SALOPIAN," of Maryport. Official Number, 24,602.

Date of Abandonment, 24th October, 1879.

Date of Inquiry, 20th November, 1880.

The *Salopian* was a barque of 260 tons register, built in the year 1841. On the 25th September, 1880, she sailed from Lisbon bound for Garston with a cargo of about 400 tons of phosphate of lime. On the 8th October the vessel encountered a heavy gale, in which her mainmast and gear was carried away, and she began to make water. On the 17th she was off the coast of Ireland, but the master declined the assistance of a tug, and refused to comply with the application of the crew to put into port. The vessel was twice blown off the coast, and on the 24th, the pumps being choked and the crew exhausted, she was abandoned, the master and crew being rescued by the Austrian barque *Slavia*. The master died four days after his rescue. An Inquiry into the case was held at Glasgow by the Wreck Com-

missioner, assisted by Captains Kennedy and Cowie, Assessors. The Court came to the following conclusions :—

1. That the *Salopian* when she left Lisbon was not in a good and seaworthy condition. Although built in 1841 she had never been opened out since 1867, and appears to have had no substantial repairs dóne to her since 1876. It appeared from the evidence of the carpenter that while the vessel was at Troon, whence she sailed for Lisbon, several rotten places were found in her, and the crew stated that even in fine weather she required frequent pumpings. 2. That she was not in a condition to carry her cargo with safety. The Court find that the master was not justified in refusing the services of the tug, and that it was his duty to have availed himself of the opportunity of taking the vessel into port. The Court consider that the master, as managing owner of the vessel, was mainly responsible for the casualty, though some share of responsibility must also rest with the other owners for allowing the vessel to go to sea in the state in which she was.

51. S.S. "TELFORD," of London. Official Number, 76,978.

Date when last heard of, 3rd October, 1879.

Date of Inquiry, 10th July, 1880.

The *Telford* was an iron screw steamer of 1,130 tons register. On the 3rd October, 1879, she sailed from New York, bound to Antwerp with a cargo of 84,314 bushels of grain (chiefly Indian corn), and since that date nothing has been heard of her. An Inquiry was held into the case at Westminster before the Wreck Commissioner, assisted by Captains Castle and Clarke and Mr. C. W. Merrifield, Assessors. The Court came to the following conclusions :—

1. That when the vessel left New York her crank shaft was damaged, and although the damage was repaired for the voyage home, she could not be considered to have been in a good and seaworthy condition, in that respect at least.

2. That the cargo was not properly stowed, the grain in the lower hold being in bulk, whilst that in the 'tween-decks was in bags, so that as the cargo settled in the lower hold it would leave an empty space immediately below the 'tween-decks.

3. That the shifting boards were not sufficient, being only carried down to the hold beams instead of to the keelson, or, at all events, in the fore and main-holds.

4. That the vessel's stability, although small, did not appear to have been wholly insufficient for the voyage.

The Court considered that the loss of the vessel was probably due to her being disabled by the failure of her crank shaft, and to the shifting of cargo owing to the insufficiency of the shifting boards, and to no means having been provided to feed the lower holds as the cargo settled.

52. S.S. "TIARA," of London. Official Number, 70,607.

Date of Abandonment, 27th November, 1879.

Date of Inquiry, 12th February, 1880.

The *Tiara* was an iron screw steamer of 1,173 tons register. On the 11th November, 1879, she sailed from Alexandria, bound to Hull, with a cargo of 2,293 tons of cotton seed in bulk. When off Cape Finisterre heavy weather set in, and the vessel began to have a considerable list to port. A great deal of water came into the vessel, and at last she fell off into the trough of the sea. The master then decided to abandon the ship, and he and his crew were received on board the *Hipparchus*, there being at the time from 10 to 11 feet of water in the *Tiara's* hold. An Inquiry was held into the case at Newcastle before the Wreck Commissioner, assisted by Captains Forster and Castle, Assessors, when the Court came to the following conclusion :—

That, considering the season of the year and the nature of the voyage, the *Tiara* was too deeply laden for a vessel of her construction. The vessel had not sufficient stability for the carriage of a full cargo of grain. The Court observe that she was a tender ship, due mainly to the great depth of her hold in proportion to her beam, and it is to this that they mainly attribute her loss. They notice, however, the excellent arrangement of the shifting boards, owing to which the cargo probably did not shift until the vessel herself had fallen over on her beam-ends. The Court also think that the system for freeing the steamship from water was not sufficient, more especially as regards the after compartment of the fore-hold.

That the arrangement for working the sluices of such after compartment were not good, for that provision should have been made to get at the sluices from the engine-room.

That the loss of the said ship was due no doubt, in part, to Henry Bethel, the master :—

(1.) For having placed additional weight above the mean centre of gravity of the ship, machinery, and cargo, by filling the store-room and petty officers' quarters with seed, such space not having been originally intended for the reception of cargo ;

(2.) For neglecting to replenish his coal bunkers at Gibraltar ;

(3.) For stopping the engines at 2 p.m. of the 27th of November, thus leaving the vessel to labour in the trough of the sea, instead of making for the nearest port ; and

(4.) For flooding the fore compartment of the fore-hold with water out of the after compartment of the same hold, at about 3 p.m. of the 27th November.

They did not, however, in the circumstances deal with the master's certificate.

53. S.S. "TRAVELLER," of Newport. Official Number, 68,209.

Date of Casualty, 12th March, 1880.

Date of Inquiry, 15th April, 1880.

The *Traveller* is a paddle-wheel steam-tug of 14·84 tons register. On the 12th March, while she was engaged in towing a vessel, a joint of one of the mud-hole doors of the starboard boiler gave way and commenced to leak. It appears that some months previously, the owner had caused some alterations to be made in the boiler, in effecting which he adopted a plan which involved the doors and the joints being placed on the outside of the boilers, and it was the joint of one of these doors which was leaking. The necessary repairs having been executed by an engine fitter, assisted by two of the firemen, the water was again let into the boiler. The joint, however, not being quite tight, two of the men were engaged in securing the mud-hole door, tightening the blow up and standing on the spanner, forced it down with all their might. Suddenly the cast-iron door inside the boiler gave way, and released the mud-hole door, thus allowing the steam and water to rush from the boiler into the stoke-hole.

One of the men escaped, but the fireman, Benjamin Taylor, was severely scalded and died the same evening. An Inquiry was held at Newport before Messrs. J. Murphy and T. Beynon, assisted by Captain Hight, and Mr. J. R. Ravenhill, C.E., Assessors. The Court considered that cast iron should not be used for such a purpose as mud-hole doors or their fittings, and that outside joints in such doors are highly objectionable. They regretted that the Board of Trade surveyor should have passed the original cast iron doors, and they called attention to the fact that many vessels were stated to be running in the district with cast iron mud-hole doors. The Court found that this was the second fatal explosion which had occurred within three years in steam-tugs belonging to the owners of the *Traveller*. They thought the owner deserving of severe censure for not attending to the machinery more carefully, for not informing himself as to the actual weight on the safety-valves, and for not having all the steam gauges examined from time to time.

54. "UGANDA," of Penzance. Official Number, 47,152.

Date of Casualty, 13th March, 1880.

Date of Inquiry, 22nd April, 1880.

The *Uganda* was a wooden schooner of 137·81 tons. On the 13th March, 1880, she sailed from Swansea to Plymouth with a cargo of anthracite coal from the Seven Sisters Pit. The master was cautioned that this coal would give off large quantities of gas, and that special attention to ventilators was required. On the evening of the 13th an explosion took place by which several of the crew were injured, and the vessel was considerably damaged. An Inquiry

was held at Swansea before Mr. J. C. Fowler, assisted by Captains Hight and Parfitt, Nautical Assessors. The Court found that there were adequate means of ventilation, but that the plan of two ventilators of 5½ inches in diameter might not have insured sufficient surface ventilation over the coals in calm weather with closed hatches. They found, moreover, that the ventilator was not properly trimmed, one being fixed to the flange by oxidation, and the other being altogether unshipped, and they find the master in default for negligence in this respect. The bulkheads moreover were not airtight, a hole having been burnt in one of them. The explosion is attributed to accumulation of gas from the cargo, owing to defective ventilation after the hatches were closed. In giving judgment, Mr. Fowler expressed approval of the practice adopted by the shippers of the coal of giving written notices as to its gaseous qualities, and he only suggested that the notices should be more widely distributed. The Judge also commented on the negligent treatment of the ventilators in this case, and the dangerous conditions caused thereby. He referred to the opinion expressed by the Wreck Commissioner as to the necessity of carrying off the gas "from the surface." In the present case he observed it was clear that a ventilator at one end of the deck, and a mere open hole at the other end, were quite insufficient for safety. He strongly censured the carelessness and thoughtlessness displayed by the master in not paying any attention to the ventilator.

55. "YANIKALE," of Peterhead. Official Number, 18,981.
Date of Abandonment, 8th October, 1880.
Date of Inquiry, 4th, 5th, and 6th November, 1880.

The *Yanikale* was a barque of 298 tons register, built in 1854. On the 12th September, 1880, she arrived at Shields on her return from a voyage to Spain and the Baltic, and on the 17th proceeded thence to Gloucester, her port of destination. She had on board a cargo of 250 tons of iron and 110½ standard of deals. After passing Beachy Head the provisions and oil ran short, and the crew were finally reduced to flour and water. When off the coast of Cornwall a heavy gale was encountered, during which the sails were blown away, the vessel began to leak, and was carried almost helpless up and down the coast, and on the 8th the master and crew abandoned her and were landed at Swansea by the schooner *St. Devenick*. An Inquiry was held at Swansea before the Wreck Commissioner, with Captains Forster and Clarke, Assessors. The Court found as follows:—

(1.) That the *Yanikale* when she left Gefle on her homeward voyage was not in a good and seaworthy condition.

(2.) That her cargo was not properly stowed. The 250 tons of iron carried by the vessel consisted of square pieces 2 or 3 feet long and laid in the bottom of the vessel on the ceiling right fore-and-aft and rising only a little above the top of the keelson. The Court consi-

dered that the iron should have been stowed by building it up in the centre with the deals on each side protected from the iron by wooden slabs.

(3.) That the vessel was overladen, having regard to her state and condition and the weakness of her bottom.

(4.) That there was not a sufficient quantity of provisions put on board at Gefle. The Court also found that the vessel was not properly repaired on her arrival at Shields, and that she was in the same unsatisfactory condition when she proceeded on her voyage to Gloucester; also that the master was not justified in neglecting to put into some port for repairs and provisions. The Court considered that the abandonment and loss was caused by the wrongful acts and defaults of the master, who did not take every proper effort to save the vessel, and who did not navigate her with proper and seamanlike care, and they cancelled his certificate.

The Court also found the owner to blame for the casualty. They were convinced that he as well as the master was well aware of the unseaworthy condition of the vessel on leaving Shields, and they regarded the case as "one of the most disgraceful that had ever come before them." They therefore condemned the owner in the sum of £150, *nomine expensarum*.

MERCHANT SHIPPING (CARRIAGE OF GRAIN) ACT, 1880.

43 AND 44 VICT., CHAP. 43.

—o—

AN ACT TO PROVIDE FOR THE SAFE CARRIAGE OF GRAIN CARGOES BY MERCHANT SHIPPING. [7TH SEPTEMBER, 1880.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short Title and construction, 17 and 18 Vict., c. 104, &c.

1. This Act may be cited as the Merchant Shipping (Carriage of Grain) Act, 1880, and shall be construed as one with the Merchant Shipping Act, 1854, and the Acts amending the same, and together with those Acts may be cited as the Merchant Shipping Acts, 1854 to 1880.

Commencement of Act.

2. This Act shall come into operation on the first day of January, one thousand eight hundred and eighty-one (which day is in this Act referred to as the commencement of this Act).

Obligation to take precautions to prevent cargo from shifting.

3. Where a grain cargo is laden on any British ship all necessary and reasonable precautions (whether prescribed by this Act or not) shall be taken in order to prevent the grain cargo from shifting.

If such precautions have not been taken in the case of any such ship, the master of the ship and any agent of the owner who was charged with the loading of the ship or the sending her to sea shall each be liable to a penalty not exceeding three hundred pounds, and the owner of the ship shall also be liable to the same penalty, unless he shows that he took all reasonable means to enforce the observance of this section, and was not privy to the breach thereof.

Precautions against shifting of grain cargo laden in Port in Mediterranean or Black Sea or on Coast of North America.

4. Where a British ship laden with a grain cargo at any port in the Mediterranean or Black Sea is bound to ports outside the Straits of Gibraltar, or where a British ship is laden with a grain cargo on the coast of North America, the following precautions to prevent the grain cargo from shifting shall be adopted; that is to say,

(*a.*) There shall not be carried between the decks, or, if the ship has more than two decks, between the main and upper decks, any grain in bulk, except such as may be necessary for feeding the cargo in the hold, and is carried in properly constructed feeders.

(*b.*) Where grain (except such as may be carried in properly constructed feeders) is carried in bulk in any hold or compartment, and proper provision for filling up the same by feeders is not made, not less than one-fourth of the grain carried in the hold or compartment (as the case may be) shall be in bags supported on suitable platforms laid upon the grain in bulk: Provided that this regulation with respect to bags shall not apply—

(i.) To oats, or cotton seed; nor

(ii.) To a ship which is a sailing ship of less than four hundred tons registered tonnage, and is not engaged in the Atlantic trade; nor

(iii.) To a ship laden at a port in the Mediterranean or Black Sea, if the ship is divided into compartments which are formed by substantial transverse partitions, and are fitted with longitudinal bulkheads or such shifting boards as hereafter in this section mentioned, and if the ship does not carry more than one-fourth of the grain cargo, and not more than one thousand five hundred quarters, in any one compartment, bin, or division, and provided that each division of the lower hold is fitted with properly constructed feeders from the between-decks; nor

(iv.) To a ship in which the grain cargo does not exceed one-half of the whole cargo of the ship, and the rest of the cargo consists of cotton, wool, flax, barrels or sacks of flour, or other suitable cargo, so stowed as to prevent the grain in any compartment, bin, or division from shifting.

(*c.*) Where grain is carried in the hold or between the decks, whether in bags or bulk, the hold or the space between the decks shall be divided by a longitudinal bulkhead or by sufficient shifting boards which extend from deck to deck or from the deck to the keelson, and are properly secured, and if the grain is in bulk are fitted grain-tight with proper fillings between the beams.

(*d.*) In loading, the grain shall be properly stowed, trimmed, and secured.

In the event of the contravention of this section in the case of any ship, reasonable precautions to prevent the grain cargo of that ship from shifting shall be deemed not to have been taken, and the owner and master of the ship and any agent charged with loading her or sending her to sea shall be liable accordingly to a penalty under this Act.

Provided that nothing in this section shall exempt a person from any liability, civil or criminal, to which he would otherwise be subject for failing to adopt any reasonable precautions which, although not mentioned in this section, are reasonably required to prevent grain cargo from shifting.

Exemption from precautions specified in this Act for ships laden in Mediterranean or Black Sea or on Coast of North America.

5. The precautions required by this Act to be adopted by ships laden with a grain cargo at a port in the Mediterranean or Black Sea, or on the coast of North America, shall not apply to ships loaded in accordance with regulations for the time being approved by the Board of Trade; nor to any ship constructed and loaded in accordance with any plan approved by the Board of Trade.

Notice by Master of kind and quantity of grain cargo.

6. Before a British ship laden with grain cargo at any port in the Mediterranean or Black Sea, bound to ports outside the Straits of Gibraltar, or laden with grain cargo on the coast of North America, leaves her final port of loading, or within forty-eight hours after leaving such port, the master shall deliver or cause to be delivered to the British consular officer, or, if it is in Her Majesty's dominions, to the principal officer of Customs at that port, a notice stating—

34 & 35 Vict., c. 110. 36 & 37 Vict., c. 85.

(1.) The draught of water and clear side, as defined by section five of the Merchant Shipping Act, 1871, and section four of the Merchant Shipping Act, 1873, of the said ship after the loading of her cargo has been completed at the said last port of loading;

(2.) And also stating the following particulars in respect to the grain cargo; namely,

(*a.*) The kind of grain and the quantity thereof, which quantity may be stated in cubic feet, or in quarters, or bushels, or in tons weight; and

(*b.*) The mode in which the grain cargo is stowed; and

(*c.*) The precautions taken against shifting.

39 & 40 Vict., c. 36, ss. 50, 51.

The master shall also deliver a similar notice to the principal collector or other proper officer of Customs in the United Kingdom, together with the report required to be made by the Customs Consolidation Act, 1876, on the arrival of the ship in the United Kingdom.

Every such notice shall be sent to the Board of Trade as soon as practicable by the officer receiving the same.

If the master fails to deliver any notice required by this section he shall be liable to a penalty not exceeding one hundred pounds: Provided always, that the Board of Trade may, by notice published in the *London Gazette*, or in such other way as it may deem expedient, exempt ships laden at any particular port or any class of such ships from the provisions of this section.

Penalty for false statement in notice.

7. Any master of a ship, who in any notice required by this Act wilfully makes any false statement or wilfully omits any material particular, shall be liable to a penalty not exceeding one hundred pounds.

Power of Board of Trade for enforcing of Act, 17 & 18 Vict., c. 104.

8. For the purpose of securing the observance of this Act, any officer having authority in that behalf from the Board of Trade, either general or special, shall have the same power as an inspector appointed under the Merchant Shipping Act, 1854, and shall also have power to inspect any grain cargo, and the mode in which the same is stowed.

Prosecution of offences and recovery of penalties, 17 & 18 Vict., c. 104.

9. Every offence punishable under this Act may be prosecuted summarily and every penalty under this Act may be recovered and enforced summarily in like manner as offences and penalties under the Merchant Shipping Act, 1854, and the Acts amending the same.

10. For the purposes of this Act—

Definitions.

The expression "grain" means any corn, rice, paddy, pulse, seeds, nuts, or nut kernels.

The expression "ship laden with a grain cargo" means a ship carrying a cargo of which the portion consisting of grain is more than one-third of the registered tonnage of the ship, and such third shall be computed, where the grain is reckoned in measures of capacity, at the rate of one hundred cubic feet for each ton of registered tonnage, and where the grain is reckoned in measures of weight, at the rate of two tons weight for each ton of registered tonnage.

Repeal of 39 & 40 Vict., c. 80, s. 22.

11. Section twenty-two of the Merchant Shipping Act, 1876, is hereby repealed as from the commencement of this Act;

Provided that any offence against that section committed before the commencement of this Act may be prosecuted, and the penalty recovered and enforced, in like manner as if the said section had continued to remain in force.

MERCHANT SHIPPING (CARRIAGE OF GRAIN) ACT, 1880.

OFFICIAL NOTICES(*),

Nos. 1 to 6.

ISSUED BY THE BOARD OF TRADE

WITH REGARD TO

RULES AND REGULATIONS APPROVED UNDER SECTION 5 OF THE ACT.

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I.

OFFICIAL NOTICE.

To be Substituted for the Official Notice issued on the 31st December, 1880.

Merchant Shipping (Carriage of Grain) Act, 1880.

Whereas it is provided by the Merchant Shipping (Carriage of Grain) Act, 43 & 44 Vict., chap. 43, section 5, "that the precautions required by the said Act to be adopted by ships laden with a grain cargo at a port in the Mediterranean or Black Sea, or on the coast of North America, shall not apply to ships loaded in accordance with regulations for the time being approved by the Board of Trade":

And whereas the Board of Trade have for the time being and until further notice, and subject in certain cases to the additional regulations set out in the second schedule below, approved of the regulations, so far as they relate to the stowage of grain cargoes, of which the titles and dates are set forth in the first schedule below.

Now, therefore, this is to give notice that the precautions required by the said Act to be adopted by ships laden with a grain cargo shall not apply to ships laden at a port on the coast of North America, in accordance with the regulations numbered 1 to 5, of which the titles and dates are set forth in the first schedule hereto, so far as those regulations relate to the stowage of grain cargoes; and in accordance with the additional regulations set forth in the second schedule appended hereto, in the case of Rules 1 & 5 of the first schedule.

FIRST SCHEDULE.

1. The Rules of the New York Board of Underwriters, dated at the office of the Board of Underwriters, 51, Wall Street, New York, October, 1860, as amended in October, 1876, and signed by Charles Dennis, Secretary ([a]).

2. Rules of the New Orleans Board of Underwriters approved and adopted by them on the 5th April, 1881, and signed by George Mather, Secretary ([b]).

3. Rules and Regulations adopted by the Association of Marine Underwriters, New York, at a meeting held on the 16th August, 1881, H. S. Vining, Chief Inspector ([c]).

4. Rules and Regulations of the Marine Surveyors at San Francisco for ships carrying grain in bags, dated 20th December, 1877, and signed by Amos Noyes, Chairman, and C. Davidson, Secretary ([d]).

([a]) See page 291.
([b]) See page 294.
([c]) See page 296.
([d]) See page 301.

5. Acts and Rules relating to the loading of grain in ships at the ports of Montreal and Quebec. Rules and Bye-laws of the office of the Port Warden, harbour of Montreal, signed D. R. Kerr, Port Warden, 1879, Montreal; John Dick, Port Warden, 1871, June, Quebec (a).

SECOND SCHEDULE.

N.B.—In all cases in which the regulations as to the stowage of grain cargo set forth in the first schedule above do not contain the express provisions contained in this second schedule, then such of the following regulations, if any, as are not included in the regulations set forth in first schedule must also be complied with. If such of these regulations as may not be included in the regulations set forth in the first schedule are not also complied with, the precautions required by the Merchant Shipping (Carriage of Grain) Act, 1880, *must be taken.*

1. That shifting boards must extend to the keelson.

2. That there shall not be carried between the decks, or if the ship has more than two decks, between the main and upper decks, any grain in bulk, except such as may be necessary for feeding the cargo in the hold, and is carried in properly constructed feeders.

3. That grain carried in bulk must be supplied by proper feeders, or else secured by bags of grain or other cargo.

T. H. FARRER, *Secretary.*

THOMAS GRAY, *Assistant-Secretary,*
8th May, 1882, Marine Department.

RULES AND REGULATIONS IN FORCE AT DIFFERENT PORTS FOR THE STOWAGE AND CARRIAGE OF GRAIN IN SHIPS, AS REPORTED TO THE BOARD OF TRADE.

(I.)
UNITED STATES.
NEW YORK.

(1.) RULES of the NEW YORK BOARD OF UNDERWRITERS.

Office of the Board of Underwriters,
51, Wall Street, New York, October, 1860.

To Owners, Masters, and Agents of Vessels.

N.B.—Vessels (insured in Offices of this Board) loading Grain in Bags or Bulk on Voyages from Atlantic Ports of the United States to Ports in Europe will be required to conform to the following Rules, to enable the surveyor to issue the proper Certificate:—

1st. The pump-well must be sufficiently large to admit of the

(a) See page 302.

passage of a man to the bottom of the hold, and room to work conveniently when there, say not less than four feet fore-and-aft, and five feet athwartships (reference, however, must be had to the size of the keelson and assistant keelsons), and must be cased from the bottom of the vessel to the lower deck beams.

2nd. Access to the pump-well must be had either by a man-hole through the upper-deck, or by a clear passage way between-decks from the after-hatch. In no case must it be from the main-hatch.

3rd. Vessels being loaded with grain in bags must be dunnaged 12 inches on the floor, 15 inches on the bilge, and 4 inches on the sides up to the beams. If the vessel be very flat, the dunnage in the bilge must be increased at the discretion of the surveyor. In between-decks must be dunnaged three inches from the sides, and two inches from the deck, and the dunnage laid athwartships, so that the water can run to the scuppers.

4th. The dunnage in the hold must be entirely covered with sails or boards, so as to prevent any of the loose grain from running down on to the floor of the vessel, and thence to the pump-well. If sails are used they must be of good quality, and free from holes. When boards are used care must be taken that they have a firm and equal bearing on the dunnage, and that the edges and ends overlap, so that the object above designated may be secured.

5th. Two-inch shifting planks, extending four feet from the beams downward, must be properly secured on each side of the stanchions in the hold, and between-decks, to prevent the cargo from shifting, and care must be taken that the stanchions are well fastened at the top and bottom. In no case must single boards be substituted for planks.

6th. Care must be taken that the bags which are stowed in the ground tier, as well as those that are next to the sides of the vessel, are in perfect order, and that the tiers are laid close and well filled. When stowed on bulk or loose grain, must have boards or sails under them, to prevent the bags from settling into the bulk grain.

7th. Bulk or loose grain must be taken in bins prepared for that purpose. Materials for bins must be of perfectly seasoned stock; unseasoned lumber must not be used where it will come in contact with the grain.

8th. Rules 1st and 2nd likewise apply to vessels being loaded with *grain in bulk.*

9th. The floor of the bin must be laid on sleepers of scantling 2½ by 4 inches in size, 16 inches apart from centre to centre, supported by studs of a corresponding size, also 16 inches from centre to centre. It must be raised at least 12 inches from the floor of the vessel, in the bilge 15 inches, and in vessels that are very flat or sharp, increased or diminished at the discretion of the surveyor. In no case must the floor of the bin be laid on loose dunnage, nor must it be laid on the bilge keelson, notwithstanding the keelson may be

more than 12 inches high; but there must always be sufficient room for a watercourse under it. The floor is considered as extending from the keelson to the side of the vessel and not terminating at the bilge keelson. It must be laid with two thicknesses of boards, so that they will break joints at the edges and ends; and care must be taken that it be perfectly tight.

10th. The studs for the forward and after bulkheads for vessels not exceeding 14 feet depth of hold must be 4 by 6 inches in size, and of one entire piece; for vessels of a greater depth than 14 feet they must be 4 by 8 inches. They must be set 20 inches apart from centre to centre, firmly secured at the top and bottom, and properly braced and cleated on the ceiling to resist the pressure of the grain.

11th. The side of the vessel above the turn of the bilge must be ceiled after the manner of clapboarding reversed, and properly furred, so as to turn water from the grain; and all lodging knees, bosom knees, and open seams, must be made grain-tight.

12th. Shifting planks two inches thick must extend from the keelson to the deck on each side of the stanchions, fitting tight under and between the beams and carlins, and care must be taken that the stanchions are well secured at both ends, and not more than seven feet apart.

13th. Masts and water-tanks, either of wood or iron, must be properly cased to prevent damage from leakage.

14th. Vessels being loaded with over 12,000 *bushels* of grain in *bulk* must have one intermediate partition or bulkhead, so that no bin shall contain over 12,000 bushels. Vessels loading grain in bulk in quantity exceeding one-half their registered tonnage, or in bins exceeding 12,000 bushels each, on voyages from Atlantic ports of the United States to ports in Europe, will be required to conform to the foregoing, and also to the *following* rules:—

15th. Vessels with one deck, or one deck and beams, must have, in addition to the forward and after bulkheads, two trimming bulkheads (thus making a division of three compartments), extending ¾ down from the upper-deck, except in cases where the between-decks are laid forward and aft, when they shall extend only to the lower-deck, and so placed that, in loading, the middle compartment will be entirely filled, and the end ones left to trim the vessel. In the end compartments, if not entirely filled, the grain must be covered by bags of grain, or else with sails or boards, and secured by stanchions or covered with weight. The studs for the trimming bulkhead must be not less than 3 by 6 inches, and set 22 inches from the centres, of one entire piece, extending the depth of the vessel, and all studs must be firmly secured at the top and bottom, and properly braced and cleated on the ceiling.

16th. Vessels with two decks must have a midship bulkhead in the lower-hold, and trimming bulkheads between-decks, and two strakes of 'tween-deck plank should be open fore-and-aft on each side.

(*) See page 290.

17th. Stevedores must see that the grain is well trimmed up between the beams, and the space between the beams completely filled. *The draft of water to be regulated by the surveyor.*

18th. Owners and masters are particularly requested to inform the surveyor, at this office, of any vessels they may intend to load with grain, and any deviation required under peculiar circumstances must receive the approval of the surveyor.

N.B.—Vessels loaded in conformity with the above rules may have a certificate to that effect from the surveyors appointed by the Board of Underwriters, and the respective insurance companies composing said Board will be duly notified thereof.

(Signed) CHARLES DENNIS,
Secretary.

Amended, October, 1876.

(II.)

RULES of the NEW ORLEANS BOARD of UNDERWRITERS.

SAILING VESSELS.

It is understood that all Lumber used shall be Seasoned Yellow Pine.

1. The sleepers to support the platform on the floor of the vessel not to be less than 3 by 4 inches, and placed 14 inches apart, and supported by studs 16 inches apart; height above ceiling and bilges to be regulated by the surveyor, according to model of vessel.

2. The floors to be of 1-inch boards doubled, all free from holes or rents.

3. The stanchions for bulkheads to be 4 by 4, 14 inches apart, well secured at top and bottom, with braces on centre, and double boarded with 1-inch boards.

4. The shifting boards to be same quality and thickness double, and to extend from within 2 feet of keelson on both sides stanchions to lower and upper beams, said stanchions to be well secured at top and bottom.

5. The sides of the vessel to be ceiled with 1-inch boards (over not less than 1-inch strips) after the manner of clapboarding reversed, and the edges overlap 1½ inches.

6. All double-deck vessels over 700 tons register must have the cross bulkhead near the centre, and all vessels to have trimming bulkheads forward and aft from the upper-deck down to lower-deck or 1 foot below lower beams.

7. The pump well to be well secured, perfectly grain-tight, and sufficiently large to allow a man to go to the bottom of it and work, and a passage-way to it from off the deck, well secured from pressure.

8. Masts and water tanks, whether of wood or iron to be cased.

9. All double-decked vessels will be required to remove plank for

the width of 20 inches, the entire length of the vessel, half way between the main-hatch and sides, then grain run in until within 5 or 6 feet of upper-deck (according to size), the bulk grain then platformed over with 1-inch boards, and not less than five or six heights of sacks stowed over the bulk to prevent shifting.

10. All vessels 500 tons or under, with single deck and beams, will be allowed to run grain in until within 4 feet of the deck and not less than four heights of bags stowed over it, after being platformed as above.

11. All vessels over 500 tons, with single deck and beams, will be allowed to run grain in until within 5 feet of deck, and not less than five heights of bags stowed over it, after being platformed as above.

12. Vessels loading grain in bags will not be required to comply with the above rules further than to construct platform on the floor and bilges of the vessel, with the customary precaution of dunnage at the sides of the vessel.

13. The draft of water to be regulated by the Surveyor, but vessel must have not less than 3 inches side to each foot depth of hold between September 1st and March 31st, and not less than 2¾ inches to each foot as above between April 1st and September 1st, with ¼ inch to each foot of draft allowance for fresh water.

The same to be done under the inspection of the Surveyors appointed by the Board of Underwriters of this port, with the understanding that the grain clause in Time Policies is not to be controlled or affected hereby.

Approved by

NEW ORLEANS BOARD OF UNDERWRITERS,

GEO. MATHER, *Secretary.*

THOS. CONWAY,
W. M. BAKER,
E. LEPERE,
G. SCHNEIDAU,
J. K. TURLEY,
S. B. FROST,
} *Inspectors.*

Approved and adopted by the New Orleans Board of Underwriters, April 5th, 1881.

STEAMSHIPS.

1. All steamers with water ballast tanks will not be required to sheath over the same if the flooring is grain tight.

2. All steamers without water ballast tanks and the floors planked with 2½ or 3-inch plank, the same being sound, dry, and grain-tight, and not less than 18 inches above cementing, will not be required to sheath over the same.

3. All steamers having one continuous hold forward shall put up one cross bulkhead in the same, and aft if deemed necessary by the Surveyor.

(*) See page 290.

4. Shifting boards from deck to keelson of 2½-inch plank edge and edge or 1-inch boards each side of stanchions, edge and edge and seams doubled.

5. No bulk grain to be carried in between-decks or (where a ship has more than two decks) between the two upper-decks—unless in properly constructed feeders to feed the hold.

6. All steamers not having properly constructed feeders, will be allowed to run bulk until the grain is within 4, 5, or 6 feet of lower-deck (according to depth of hold), bulk grain then closely covered with 1-inch boards and not less than 4, 5, or 6 heights of bags stowed over the bulk to prevent shifting.

7. All steamers having one deck and beams will be allowed to run grain in the vessel until within 5 or 6 feet of deck, then platformed over as above and not less than 5 tiers of bags stowed over the bulk to prevent shifting.

8. *The draft of water* in all cases to be regulated by the surveyor, with a proper allowance for fresh water, and to prevent overloading, care must be taken that too much bulk grain is not run in the vessel to prevent the above-named heights of bags.

The above to be done under the inspection of the surveyors appointed by the Board of underwriters of this port, with the understanding that the Grain Clause in Time Policies is not to be controlled or affected hereby.

Approved by
NEW ORLEANS BOARD OF UNDERWRITERS,
GEORGE MATHER, *Secretary*.

THOS. CONWAY,
W. M. BAKER,
E. LEPERE,
G. SCHNEIDAU,
J. K. TURLEY,
S. B. FROST,
} *Inspectors.*

Adopted and approved by New Orleans Board of Underwriters, April 5, 1881.

(III.)

RULES of the ASSOCIATION of MARINE UNDERWRITERS.

VESSELS loading grain in bags or bulk on voyages from ports of the United States to ports in Europe, will be required to conform to the following rules adopted by the Association of Marine Underwriters at meeting of August 16, 1881, to enable the surveyor to issue the proper certificate.

Pump-well.

1. The pump-well must be sufficiently large to admit of the passage of a man to the bottom of the hold, and room to work conveniently when there, say not less than four feet fore-and-aft, and five feet athwartships (reference, however, must be had to the size of

the keelson and assistant keelsons), and must be grain tight and ceiled if required.

2. Access to the pump-well must be had either by a man-hole through the upper-deck, or by a clear passage-way between-decks from the after-hatch. In no case must it be from the main-hatch.

GRAIN IN BAGS.

Dunnage.

3. Vessels being loaded with grain in bags should be dunnaged twelve (12) inches on the floor, fifteen (15) inches on the bilges; and (2) inches on the sides. If the vessel be very flat or sharp, the dunnage may be increased or diminished at the discretion of the surveyor.

In between-decks should be dunnaged two (2) inches from the sides.

4. The dunnage in the hold must be entirely covered with sails or approved mats, so as to prevent any of the loose grain from running down on to the floor of the vessel and thence to the pump-well. If sails are used they must be of good quality and free from holes.

Shifting Planks.

5. Two-inch shifting planks (or equivalent) extending from the beams four feet downward, and between-decks, from deck to deck, must be properly secured on each side of the stanchions in the hold, and between-decks, to prevent the cargo from shifting, and care must be taken that the stanchions are well fastened at top and bottom, and properly shored.

6. Care must be taken that the bags are properly stowed, and that those stowed in the ground tier, as well as those that are next to the sides of the vessels, are in perfect order, and that the tiers are laid close and well filled. When stowed on bulk or loose grain, must have boards under them laid fore-and-aft, and so placed that each bottom bag shall be supported by two (2) boards with athwartship bearing boards sufficient to prevent the bags from settling into the bulk grain.

GRAIN IN BULK, AND IN BULK AND IN BAGS.

Bins.

7. Bulk or loose grain must be taken in bins prepared for that purpose. Materials for bins must be of well seasoned stock; unseasoned lumber must not be used where it will come in contact with the grain.

8. Rules 1st and 2nd likewise apply to vessels being loaded with grain in bulk.

Floor of Bin.

9. The floor of the bin must be laid on sleepers of scantling 2½ × 4 inches in size, 16 inches apart from centre to centre, supported by studs of corresponding size, also 16 inches from centre to centre.

(*) See page 290.

It should be raised twelve inches over the floor of the vessel—in the bilge fifteen inches, and in vessels that are very flat or sharp, may be increased or diminished at the discretion of the surveyor.

In no case should the floor of the bin be laid on loose dunnage.

The floor is considered as extending from the keelson to the turn of the bilge. It must be laid with two thicknesses of one inch boards so that they will break joints at the edges and ends, and care must be taken that it be perfectly tight. Vessels under 250 tons register may be permitted to have a single floor laid with one inch boards placed edge and edge and seams covered with battens 2 × 1 inch, or edges lapped one inch.

10. The studs for the forward and after bulkheads for vessels not exceeding 14 feet depth of hold must be equal to 4 by 6 inches in size; for vessels of a greater depth than 14 feet, they must be equal to 4 by 8 inches. They must be set 20 inches apart from centre to centre, firmly secured at the top and bottom, and properly braced and cleated on the ceiling, to resist the pressure of the grain.

11. All air strakes and open seams must be closed, and the sides of the vessel above the turn of the bilge must be ceiled after the manner of clapboarding reversed, and not furred where it can be avoided. When furring is used the bilge ceiling must be made grain-tight at the sides. All lodging and bosom knees not fitted tight to deck must be cleated around the face of the knee.

Shifting Planks.

12. Shifting planks, two inches thick (in vessels under 250 tons register 1-inch boards with edges lapped or battened may be substituted) must extend from the keelson to the deck on each side of the stanchions, fitted tight under and between the beams and carlines, and care must be taken that the stanchions are well secured at both ends, and not more than 7 feet apart. Exceptions may be made in cases where permanent shifting planks are satisfactorily fitted.

Masts and Water Tanks.

13. Masts and water tanks, either of wood or iron, must be properly cased to prevent damage from leakage, and mast coats must be strong and tight.

14. Vessels being loaded with over 12,000 bushels of grain in bulk must have intermediate partitions or bulkheads. (Vessels loading grain in bulk in quantity exceeding one-half their registered tonnage, or in bins exceeding 12,000 bushels each, on voyages from Atlantic ports of the United States to ports in Europe, will be required to conform to the foregoing, and also to the following rules):—

15. Vessels carrying a full cargo in bulk are required to have,

in addition to the forward and after end bulkheads, two trimming bulkheads (thus making a division of three compartments), to extend from the upper-deck to the bottom of the vessel. Except where the between-decks are laid aft, the after one may extend only to lower-deck, and so placed that in loading the middle compartment will be entirely filled and the end ones left to trim the vessel. If the end compartments are not entirely filled care must be taken that the cargo be properly secured to prevent shifting. The studs for the trimming bulkheads to be not less than 3 × 6 inches and set 22 inches from the centres, and all studs to be firmly secured at top and bottom and properly braced and cleated.

16. Vessels carrying bulk and bags, should not carry the bulk higher than to admit of the stowage of one quarter of the cargo, or not less than five heights of bags over it (except the vessels be under 500 tons register, when the height may be regulated by the surveyor), and will be required to have, in addition to end bulkheads, a forward trimming bulkhead, extending from the top of the bulk to the bottom of the vessel, as provided in case of vessels carrying full cargoes in bulk.

Vessels with two decks, having bulk in the hold as high as the lower deck, should have four strakes of 'tween-deck-plank open on each side over the bulk.

When the hold is not filled to the deck, enough space must be left to stow sufficient cargo over it to properly secure it. But no double-deck vessel is permitted to carry bulk grain in 'tween-decks, except in properly constructed feeders, and if amidships having centre shifting boards.

Draft or Freeboards.

17. The grain must be well trimmed up between the beams, and the space between the beams completely filled.

The draft of water or freeboard to be regulated by a scale approved by the Loading Committee.

Freeboard shall be measured from top of deck at the side of the vessel to the water's edge at lowest point of sheer.

IRON SAILING VESSELS.

18. The foregoing rules are also to apply to iron sailing vessels, excepting that in cases where the frames and inside of plating are in such condition as to warrant it, the side ceiling may be dispensed with; while that on the floor should be laid 6 inches high and raised in the bilges to 9 inches, if required by the surveyor.

IRON STEAMSHIPS.

1. All steamers with water ballast tanks, will not be required to sheathe over the same, if the flooring is in good condition and grain tight, and the water courses in bilges properly covered.

(*) See page 290.

2. Steamers without water ballast tanks, and the floors planked with 2½ or 3-inch planks, the same being sound, dry and grain tight, and not less than 18 inches above cementing, will not be required to sheathe over the same.

3. Steamers with a continuous hold forward will require a close bulkhead in the same, and also aft if deemed necessary by the surveyor.

4. Shifting boards to be the same as required for sailing vessels, and care to be taken that they are well shored, especially abreast of the large hatches.

5. No bulk grain to be carried in between-decks, or (where a ship has more than two decks) between the two upper decks, unless in properly constructed feeders to feed the hold; feeders amidships to have centre shifting boards.

6. Steamers not having properly constructed feeders, will be required to leave sufficient space above the bulk, not less than four feet, to properly secure it with bags or other cargo; the bulk to be platformed as in section 7.

7. Steamers having one deck and beams, may carry bulk to such a height as will permit the stowage over it of not less than five heights of bags, stowed athwartships over boards laid fore-and-aft and so placed that each bottom bag shall be supported by two boards with athwartship bearing boards sufficient to prevent the bags from settling into the bulk grain.

8. Section 17 for sailing vessels, is also applicable to steamers.

General Regulations.

Owners and masters of vessels intending to load grain, are particularly requested to give early notice to the surveyor at this office, when ready for ceiling, and also when ready to receive grain.

Any deviation required under peculiar circumstances, must receive the approval of the Loading Committee or Board of Surveyors at port of loading.

Vessels loaded in conformity to the foregoing rules, may have a certificate to that effect from the surveyor appointed by the Association of Marine Underwriters, and the respective Insurance Companies composing said Association will be duly notified thereof.

SURVEYORS.

New York.—H. S. Vining, Jos. C. Witham, Thos. M. Nichols, Lewis E. Jackson, Benj. F. Hoyt. Office, 130, Pearl Street.

Boston.—Elisha Whitnay. Office, 43, Devonshire Street.

Baltimore.—Jno. L. Sandford, Chas. R. Johnson, Edwd. H. Sanford, Horatio N. Gray, Jas. V. Johnson, Chas. M. Morris. Office, 106, Thames Street.

New Orleans.—Thomas Conway, W. M. Baker, E. Lepere, G. Schneidau, J. K. Turley.

PHILADELPHIA.—Thos. G. Munroe, Wm. E. Shankland, James Rowland. W. S. Samuels. Office, No. 17, Merchants Exchange.

LOADING COMMITTEE.

W. I. Comes, Charles Platt, J. Raymond Smith, A. Foster Higgins, Herbert Fuller.

This is a true copy of the Rules for loading Grain Vessels adopted by the Association of Marine Underwriters.

H. S. VINING, *Chief Inspector.*

New York, January 16, 1882.

(IV.)

SAN FRANCISCO.

RULES AND REGULATIONS OF THE MARINE SURVEYOR.

Grain Cargoes wholly in Bags.

Wooden Ships.

Dunnage at the bottom to be not less than ten inches on the floor, and fifteen inches at the bilge.

Dunnage and sides to be clapboarded from the keelson to the upper-deck shelf.

All decks to be dunnaged with strip and board two inches high.

Sufficient covering to be laid over the bottom as high as the upper turn of the bilge, all fore-and-aft, to prevent the loose grain getting to the pumps.

Three tiers of shifting boards two inches thick, to be placed on each side of the stanchions, abreast of each other in each of the 'tween-decks in three-decked ships, and ships with two decks to have two tiers in the lower-hold in addition to those in the 'tween-deck.

In vessels where no man-hole is fitted to get to the pumps, a proper communication is to be left through the cargo to get access to the pump-well.

Iron Ships.

Dunnage in the bottom to be not less than six inches on the floor, and ten inches at the bilge. Lower-hold to be lined with boards from the keelson to the lower-deck beams.

The sides of the 'tween-decks, if fore-and-aft battened only, the space between the battens to be filled in with boards.

Where vertical battens are fitted over the fore-and-aft ones, thick mats may be used in lieu of the boards before named, but in the absence of mats additional vertical battens are to be fitted between the original ones.

Where the 'tween-deck is laid and caulked with combings fitted round hatchways, the deck to be dunnaged with strip and board two inches high, but where the deck is open, the gutter waterway only will require to be covered with a fore-and-aft board.

(*) See page 290.

In all cases where a vessel has carried salt or other cargo which leaves a permanent dampness in the deck, it is to be dunnaged in the same manner as a laid deck.

Covering of bottom, arrangement of shifting boards, and passage to pump well to be as prescribed for wooden ships.

(Signed) AMOS NOYES, *Chairman.*
C. DAVIDSON, *Secretary.*

Dated, San Francisco, 20th December, 1877.

(V.)

CANADA.

ACTS AND RULES RELATING TO THE LOADING OF GRAIN IN SHIPS AT THE PORTS OF MONTREAL AND QUEBEC.

MONTREAL.

An Act to provide for the appointment of a Port Warden for the Harbour of Montreal.

[*Assented to* 12*th May*, 1863.]

WHEREAS the increasing trade of the city and business of the harbour of Montreal renders the office of Port Warden necessary: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

1. There shall be at the city of Montreal an officer who shall be designated the Port Warden of the harbour of Montreal.

2. The appointment to the office shall be made by the Governor in Council on the recommendation of the Board of Trade of Montreal, and the control of the office shall be in the Council of the Board of Trade for the city of Montreal, which shall, in the present year, as soon as may be after the passing of this Act, and after this year in the month of April in each year appoint a Board of Examiners, five in number, who shall examine all candidates for the office of Port Warden, or such number of Deputy Port Wardens as the said Council may from time to time deem necessary for the business of the harbour, and upon the recommendation of the said Examiners the Council shall make the appointments of such deputies.

3. The person so appointed to be Port Warden shall, before acting as such, take and subscribe the following oath of office before some justice of the peace for the district of Montreal, who is hereby empowered to administer the same, and who shall have the custody thereof:

"I, *A. B.*, do solemnly swear that I will faithfully and impartially, to the best of my judgment and ability, perform the duties of the office of Port Warden of the harbour of Montreal, without fear, favour, or affection for any person or party whomsoever."

4. The Port Warden shall receive no fees whatever, other than such as strictly appertain to the business of his office; all such fees shall be recorded in his books, and he shall make a certified annual return to the said Council of the Board of Trade of the receipts and expenses of his office.

5. The Port Warden, or any Deputy Port Warden, may be removed for misconduct or neglect of duty at the instance or discretion of the Council of the Board of Trade; and the said Board of Examiners shall make, and when they shall think it necessary may repeal or amend, all such rules and regulations or bye-laws for regulating the office of Port Warden as they may deem from time to time necessary, subject to the approval of the Council of the Board of Trade.

6. The Port Warden shall, at his own expense, keep an office always open on lawful days from 9 a.m. till 6 p.m. during the season of navigation, and from 10 a.m. till 2 p.m. during the remainder of the year, and shall have a seal of office and the necessary books, in which all his acts as Port Warden, and those of his deputies, with their fees of office, shall be recorded in such manner as the Board of Examiners shall direct.

7. It shall be the duty of the Port Warden, or his deputy, on being notified and requested by any of the parties interested, to proceed in person on board of any vessel for the purpose of examining the condition and stowage of cargo; and if there be any goods damaged on board such vessel, he shall inquire, examine, and ascertain the cause or causes of such damage, and make a memorandum thereof, and enter the same in full on the books of his office.

8. The master of any vessel which has broken bulk for the purpose of lightening or other necessary purpose, previous to her arrival in the harbour of Montreal, shall, immediately on the discovery of any damaged cargo, proceed to hold a survey on the same in the manner herein prescribed, before the same shall be moved out of the place in which it was originally stowed; and if, after the arrival in port of any vessel from beyond the seas which has not had occasion to lighten, break bulk, or otherwise discharge any portion of her cargo before coming into the harbour, the hatches of such vessel shall be first opened by any person not a Port Warden, and the cargo, or any part thereof, shall come from on board such ship in a damaged condition, these facts shall be *primâ facie* evidence that such damage occurred in consequence of improper stowage or negligence on the part of the persons in charge of the vessel; and such default shall, until the contrary be shown, be chargeable to the owner, master, or other person interested as part owner or master of the said vessel.

9. The Port Warden shall, when required, proceed to any ship, steamer, or other vessel, warehouse, dwelling, or wharf, and examine

(a) See page 290.

any merchandise, vessel, material, produce, or other property said to have been damaged on board of any vessel, and inquire, examine and ascertain the cause of such damage, make a memorandum thereof, and of such property, and record in the books of his office a full and complete statement thereof.

10. The Port Warden shall, when required, be surveyor on any vessel which may have suffered wreck or damage, or which shall be deemed unfit to proceed on her voyage; he shall examine the hull, spars, rigging, and all appurtenances thereof, shall specify what damage has occurred, record in the books of the office a full and particular account of all surveys held on such vessel; he shall call to his assistance, if necessary, in such survey, one or more carpenters, sailmakers, riggers, shipwrights, or other persons skilled in their profession, who shall each be entitled to a fee not exceeding two dollars for the first survey, and one dollar for each subsequent one on which their services may be required, to aid him in the examination and survey, but no such surveyor must be interested in the case; the Port Warden shall also, if required, be a surveyor of the repairs necessary to render such vessel seaworthy, and his certificate that these repairs have been properly made, shall be evidence that the vessel is seaworthy.

11. The Port Warden shall have cognizance of all matters relating to the surveys of vessels and their cargoes arriving in port damaged, and when requested shall, on payment of the regular fee, give certificates of such surveys.

12. The master of any vessel intending to load grain in bulk for any port not within the limits of inland navigation shall, before taking in any of such grain, notify the Port Warden from time to time, while the different chambers are being prepared, to survey and inspect the said vessel, as well as the dunnage and lining boards; the Port Warden in such case shall ascertain whether such vessel is in a fit state to receive and carry the cargo intended for her to its destination; he shall record in his books the condition of the vessel; if he finds she is not fit to carry the cargo in safety, he shall state what repairs are necessary to render her seaworthy; before beginning to load each chamber he shall be careful to see that it is properly dunnaged and lined, and provided with shifting boards, and that the board and plank used for these purposes have been proporly seasoned; he shall examine the pumps and see that they are properly lined and dunnaged; he shall enter in the books of his office all particulars connected with these surveys, and grant the necessary certificates.

13. It shall be the duty of the Port Warden, when required, to decide what amount of dunnage is necessary below cargo, and also between wheat or other grain, and the flour to be stowed over it, and his certificate that such dunnage has been used shall be *primâ facie* evidence of the good stowage of the cargo so far as these points are concerned.

14. The Port Warden, if requested by any person having shipped cargo on board of a vessel and at the expense of such person, shall proceed on board of such vessel and examine whether she is in a fit state to proceed to sea or not; if she is found unfit, the Port Warden shall state in what particular, and shall notify the master not to leave the port until the required conditions have been fulfilled.

15. The Warden shall, when required, estimate the value and measurement of any vessel when the same is in dispute or otherwise needed, and shall record the same in the books of his office.

16. It shall be the duty of every auctioneer making a sale of any vessel condemned, or ships' materials, or goods damaged on board a ship or vessel, whether sea-going or of inland navigation, sold for benefit of underwriters or others concerned in the city of Montreal, to file a statement of the same at the office of the Port Warden within ten days after such sale; no underwriters' sale shall take place until after at least two days' public advertisement in not less than two English and one French newspapers in the city of Montreal, and such sale shall not be at an hour earlier than twelve, nor later than three o'clock in the day.

17. It shall be the duty of the Port Warden, when required in writing by all parties in interest, to hear and arbitrate upon any difficulty or matter in dispute between the master or consignee of any ship or vessel, and any proprietor, shipper, or consignee of the cargo, and keep a record thereof.

18. No goods, vessels, or other property shall be sold as damaged for account of underwriters, unless a regular survey and condemnation has previously been had, and the Port Warden shall in all such cases be one of the surveyors.

19. Before proceeding to act in any case in the performance of his duties, the Port Warden shall give reasonable notice to all parties interested or concerned in the case.

20. All notices, requests, or requirements to or from the Port Warden must be given in writing, and a reasonable time before action is required.

21. On the demand of any party interested, the Port Warden shall furnish certificates in writing, under his hand, of any matters of record in his office; he shall also furnish, when required, copies of any entries in his books, or documents filed in his office.

22. The Port Warden shall supply to every master of a vessel arriving in the port of Montreal a copy of the regulations relating to the office of Port Warden, once in each year.

23. In all matters regarding surveys, &c., the Port Warden shall conform to and be governed by the regulations of Lloyd's so far as they are applicable to the port of Montreal and to the circumstances of the case.

24. Should any dispute arise between the Port Warden and any party interested, in any case where his presence has been required,

(*) See page 290.

either party may appeal to the Board of Examiners; and it shall be the duty of the Secretary of the said Board of Trade, on a requisition being presented to him to that effect, to summon forthwith a meeting of the said Board of Examiners, who, or not less than three of them, shall immediately investigate and report on the case submitted to them, and their determination, or that of a majority of them, made in writing, shall be final and conclusive.

25. The party against whom the Examiners decide shall pay all the expenses, and the Examiners shall determine the amount of fees or charges payable in each case, which shall never exceed 20 dollars.

26. All certificates issued under the hand of the Port Warden or his deputy, and sealed with the seal of his office, referring to matters recorded in his books, shall be received as *primâ facie* evidence of the existence and contents of such record in any court in this province.

27. The Council of the Board of Trade for the city of Montreal may, from time to time, establish a tariff of fees to be paid to the Port Warden for services performed by him and his deputies, by the master or owners of sea-going vessels, and by others in respect of whom the duties of the said Port Warden are required to be performed; which tariff, being first approved by the Governor in Council, shall be in force until repealed or altered by the said Council of the Board of Trade, as it may be at any time, with the approval of the Governor in Council; but such fees shall not exceed the rates hereinafter mentioned, that is to say:—

1. For every survey and the certificate thereof by the Port Warden and his assistant, of the hatches and cargo of any vessel, or of the hull, spars, and rigging thereof, or the survey of damaged goods, a fee, including the certificate thereof, not exceeding eight dollars each, and such further sum, not exceeding five dollars, as may be payable to shipwrights or other skilled persons employed by him:
2. For every valuation of a vessel for average, and every inspection of a vessel intended to load, a fee to be graduated according to the tonnage of such vessel, but not in any case to exceed 10 dollars:
3. For hearing and settling disputes of which the Port Warden is authorised to take cognizance, and for the fees on appeal to the Board of Examiners, a sum to be graduated according to the value of the thing or amount in dispute, but in no case to exceed 20 dollars:
4. The foregoing maximum rates, comprehending the fees for the incidental proceedings, certificates, and copies, may be altered and apportioned, and the particular service distinguished, and the fee therefor assigned, and the person by whom the same shall be paid may be indicated in such way as the Council of the Board of Trade may from time to time appoint; and

all rates and fees so established shall be subject to the approval of the Governor in Council, who shall have power from time to time to reject or modify and alter such fees and rates.

MONTREAL.

An Act to amend an Act to provide for the appointment of a Port Warden for the Harbour of Montreal.

[*Assented to* 18*th September*, 1865.]

WHEREAS the Act twenty-six Victoria, chapter fifty-two, intituled: An Act to provide for the appointment of a Port Warden for the Harbour of Montreal, has been productive of great benefit to the grain trade of Canada, and it is necessary to alter the same and otherwise amend the said recited Act: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

1. In addition to the fees authorised to be taken by the said recited Act for services performed by the Port Warden or his deputies, the following fees and charges shall be paid by the shippers of the following articles from the Port of Montreal, in sea-going vessels, that is to say:

On all grain shipped from the said port, a fee not exceeding twenty-five cents. for every one thousand bushels, with a proportionate charge for every fractional quantity thereof;

On all flour shipped from the said port, a fee not exceeding one dollar for every one thousand barrels, with a proportionate charge for every fractional quantity thereof;

On all ashes shipped from the said port, a fee not exceeding two cents. per barrel;

On all other articles not herein-before enumerated, and shipped from the said port, a fee not exceeding ten cents. per ton weight or ton measurement, and the same fee on all quantities or parcels of such other articles exceeding in the whole shipment half a ton, though not amounting to one ton weight or measurement; but no fee to be charged in respect of such other articles for any shipment not amounting to half a ton, or for any fractional parts of a ton in any shipment exceeding one or more tons.

2. The Council of the Board of Trade for the city of Montreal may from time to time establish a tariff of fees for the services of the Port Warden, in respect of the matters comprised in the first section of this Act, in the same manner as provided by the said recited Act for the charges thereby authorised, but such tariff shall not exceed the limits imposed by the first section of this Act; and such tariff, being first approved by the Governor in Council, shall be in force until repealed or altered by the said Council of the Board of Trade, as it may be at any time with the approval of the Governor in Council; and such maximum rates may be altered and apportioned,

(a) See page 290.

and the particular service distinguished, and the fee thereof assigned, as the Council of the Board of Trade may from time to time appoint, and in the same manner as the rates imposed by the said recited Act, and so as that the fourth sub-section of the twenty-seventh section of the said recited Act shall read and be construed as if it had reference to the rates hereby imposed, as well as to the rates imposed by such Act, and subject to the approval of and with the same powers in the Governor in Council as in such fourth sub-section provided.

3. The Port Warden shall record all fees received under this Act, and make annual return thereof, in the same manner as provided by the fourth section of the said recited Act, and the twenty-fourth and twenty-fifth sections of the said Act shall apply to any dispute arising between the Port Warden and any shipper from whom fees are claimed under this Act.

4. The Board of Trade may, if they see fit, at any time fix and appoint a salary to the Port Warden, to include his own remuneration and that of his deputies and his expenses of office or otherwise, as may be arranged; and for any period during which the Port Warden shall be paid by salary, such balance as may appear by his certified annual return to be in his hands over and above his salary (or over and above his salary, that of his deputies and his expenses of office, if the same are not included in his salary), shall be forthwith paid by the said Port Warden to such person as the Board of Trade shall depute to receive the same.

5. The penalty for any and every infraction or breach of the eighth section of the said recited Act, shall be the sum of forty dollars; and for every infraction or breach of the twelfth section of the said Act, the sum of forty dollars; and for every infraction or breach of the sixteenth section of the said Act, the sum of twenty dollars; and any and every such penalty as aforesaid shall be recoverable in the manner prescribed by the Interpretation Act, in cases where penalties are imposed, and the recovery is not otherwise provided for.

QUEBEC.

An Act to provide for the appointment of a Port Warden for the Harbour of Quebec.

[*Assented to* 14*th April*, 1871.]

WHEREAS the increasing trade of the city and business of the harbour of Quebec renders the office of Port Warden necessary: therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. There shall be at the city of Quebec an officer who shall be designated the Port Warden of the harbour of Quebec.

2. The appointment to the office shall be made by the Governor in Council on the recommendation of the Board of Trade of Quebec, and the control of the office shall be in the Council of the Board of

Trade for the city of Quebec, which shall in the present year as soon as may be after the passing of this Act, and after this year in the month of April in each year, appoint a Board of Examiners, five in number, who shall examine all candidates for the office of Port Warden, or such number of Deputy Port Wardens as the said Council may from time to time deem necessary for the business of the harbour, and upon the recommendation of the said Examiners the Council shall make the appointments of such deputy.

3. The person so appointed to be Port Warden shall, before acting as such, take and subscribe the following oath of office before some Justice of the Peace for the district of Quebec, who is hereby empowered to administer the same, and who shall have the custody thereof:—

"I, *A. B.*, do solemnly swear that I will faithfully and impartially, to the best of my judgment and ability, perform the duties of the office of Port Warden of the harbour of Quebec, without fear, favour, or affection for any person or party whomsoever."

4. The Port Warden shall receive no fees whatever, other than such as strictly appertain to the business of his office; all such fees shall be recorded in his books, and he shall make a certified annual return to the said Council of the Board of Trade of the receipts and expenses of his office.

5. The Port Warden, or any Deputy Port Warden, may be removed for misconduct or neglect of duty at the instance or discretion of the Council of the Board of Trade; and the said Board of Examiners shall make, and when they shall think it necessary may repeal or amend, all such rules and regulations or bye-laws for regulating the office of Port Warden as they may deem from time to time necessary, subject to the approval of the Council of the Board of Trade.

6. The Port Warden shall, at his own expense, keep an office always open on lawful days from 9 a.m. to 6 p.m. during the season of navigation, and from 10 a.m. till 2 p.m. during the remainder of the year, and shall have a seal of office and the necessary books, in which all his acts as Port Warden, and those of his deputies, with their fees of office, shall be recorded in such manner as the Board of Examiners shall direct.

7. It shall be the duty of the Port Warden, or his deputy, on being notified and requested by any of the parties interested, to proceed in person on board of any vessel for the purpose of examining the condition and stowage of cargo; and if there be any goods damaged on board such vessel, he shall inquire, examine, and ascertain the cause or causes of such damage, and make a memorandum thereof, and enter the same in full on the books of his office.

8. The master of any vessel which has broken bulk for the purpose of lightening or other necessary purpose, previous to her arrival in the harbour of Quebec, shall, immediately on the dis-

(a) See page 290.

covery of any damaged cargo, proceed to hold a survey on the same in the manner herein prescribed, before the same shall be moved out of the place in which it was originally stowed; and if after the arrival in port of any vessel from beyond the seas which has not had occasion to lighten, break bulk, or otherwise discharge any portion of her cargo before coming into the harbour, the hatches of such vessel shall be first opened by any person not a Port Warden, and the cargo, or any part thereof, shall come from on board such ship in a damaged condition, these facts shall be *primâ facie* evidence that such damage occurred in consequence of improper stowage or negligence on the part of the persons in charge of the vessel; and such defaulter shall, until the contrary be shown, be chargeable to the owner, master, or other person interested as part owner or master of the said vessel.

9. The Port Warden shall, when required, proceed to any ship, steamer, or other vessel, warehouse, dwelling, or wharf, and examine any merchandise, vessel, material, produce, or other property said to have been damaged on board any vessel, and inquire, examine, and ascertain, the cause of such damage, make a memorandum thereof, and of such property, and record in the books of his office a full and correct statement thereof.

10. The Port Warden shall, when required, be surveyor on any vessel which may have suffered wreck or damage, or which shall be deemed unfit to proceed on her voyage. He shall examine the hull, spars, rigging, and all appurtenances thereof, shall specify what damage has occurred, record in the books of the office a full and particular account of all surveys held on such vessel; he shall call to his assistance, if necessary, in such survey, one or more carpenters, sail-makers, riggers, shipwrights, or other persons skilled in their professions, who shall each be entitled to a fee not exceeding five dollars, to aid him in the examination and survey, but no such surveyor shall be interested in the case; the Port Warden shall also, if required, be surveyor of the repairs necessary to render such vessel seaworthy, and his certificate that these repairs have been properly made shall be evidence that the vessel is seaworthy.

11. The Port Warden shall have cognizance of all matters relating to the surveys of vessels and their cargoes, arriving in port damaged, and when requested shall, on payment of the regular fee, give certificates of such surveys.

12. The master of any vessel intending to load grain in bulk for any port not within the limits of inland navigation, nor within the Dominion of Canada, shall, before taking in any of such grain, notify the Port Warden from time to time, while the different chambers are being prepared, to survey and inspect the said vessel as well as dunnage and lining boards; the Port Warden in such case shall ascertain whether such vessel is in a fit state to receive and carry the cargo intended for her to its destination; he shall record in his

books the condition of the vessel; if he finds she is not fit to carry the cargo in safety, he shall state what repairs are necessary to render her seaworthy; before beginning to load each chamber he shall be careful to see that it is properly dunnaged and lined, and provided with shifting boards, and that the board and plank used for these purposes have been properly seasoned; he shall examine the pumps and see that they are properly lined and dunnaged ;he shall enter in the books of his office all particulars connected with the surveys, and grant the necessary certificates.

13. It shall be the duty of the Port Warden, when required, to decide what amount of dunnage is necessary below cargo, and also between wheat and other grain and the flour to be stowed over it, and his certificate that such dunnage has been used shall be *primâ facie* evidence of the good stowage of the cargo, so far as these points are concerned.

14. The Port Warden, if requested by any person having shipped cargo on board of a vessel, and at the expense of such person, shall proceed on board of such vessel and examine whether she is in a fit state to proceed to sea or not; if she is found unfit the Port Warden shall state in what particular, and shall notify the master not to leave the port until the required conditions have been fulfilled.

15. The Port Warden shall, when required, estimate the value and measurement of any vessel, when the same is in dispute or otherwise needed, and shall record the same in the books of his office.

16. It shall be the duty of every auctioneer making a sale of any vessel condemed, or ship's materials, or goods damaged on board a ship or vessel, whether seagoing or of inland navigation, sold for benefit of underwriters or others concerned, in the harbour or city of Quebec, to file a statement of the same at the office of the Port Warden within ten days after such sale; no underwriters' sale shall take place until after at least two days' public advertisement in not less than two English and one French newspapers in the city of Quebec, and such sale shall not be an hour earlier than eleven, nor later than three o'clock in the day.

17. It shall be the duty of the Port Warden, when required in writing, by all parties in interest, to hear and arbitrate on any difficulty or matter in dispute between the master or consignee of vessel, and any proprietor, shipper, or consignee of the cargo, and to keep a record thereof.

18. No goods, vessels, or other property shall be sold as damaged for account of underwriters, unless a regular survey and condemnation has previously been had, and the Port Warden shall in all such cases be one of the surveyors.

19. Before proceeding to act in any case in the performance of his duties, the Port Warden shall give reasonable notice to all parties interested or concerned in the case.

(*) See page 290.

20. All notices, requests, or requirements to or from the Port Warden must be given in writing, and a reasonable time before action is required.

21. On the demand of any party interested, the Port Warden shall furnish certificates in writing, under his hand, of any matters of record in his office; he shall also furnish, when required, copies of any entries in his books, or document filed in his office.

22. On application, the Port Warden shall supply to any master of a vessel arriving in the Port of Quebec a copy of the regulations relating to the office of Port Warden, once in each year.

23. In all matters regarding surveys, &c., the Port Warden shall conform to and be governed by the regulations of Lloyd's so far as they are applicable to the Port of Quebec and to the circumstances of the case.

24. Should any dispute arise between the Port Warden and any party interested, in any case where his presence has been required, either party may appeal to the Council of the Quebec Board of Trade, and it shall be the duty of the Secretary of the said Board of Trade, on a requisition being presented to him to that effect, to summon forthwith a meeting of the Council, who, or not less than three of them, shall immediately investigate and report on the case submitted to them, and their determination, or that of a majority of them, made in writing, shall be final and conclusive.

25. The party against whom the Council of the Board of Trade decide shall pay all the expenses, and the Council shall determine the amount of fees or charges payable in each case, which shall never exceed 20 dollars.

26. All certificates issued under the hand of the Port Warden, or his deputy, and sealed with the seal of his office, referring to matters recorded in his books, shall be received as *primâ facie* evidence of the existence and contents of such record in any Court in Canada.

27. The Council of the Board of Trade for the city of Quebec may, from time to time, establish a tariff of fees to be paid to the Port Warden for services performed by him and his deputies, by the masters or owners of sea-going vessels, and by others in respect of whom the duties of the said Port Warden are required to be performed, which tariff, being first approved by the Governor in Council, shall be in force until repealed or altered by the said Governor in Council, or by the said Council of the Board of Trade, as it may be at any time, with the appoval of the Governor in Council; but such fees shall not exceed the rates hereinafter mentioned, that is to say :—

1. For every survey and the certificate thereof by the Port Warden and his assistant, of the hatches and cargo of any vessel, or of the hull, spars, and rigging thereof, or the survey of

damaged goods, a fee, including the certificate thereof, not exceeding eight dollars (each), and such further sum not exceeding five dollars, as may be payable to shipwrights or other skilled persons employed by him.

2. For every valuation of a vessel for average, and every inspection of a vessel intended to load, a fee to be graduated according to the tonnage of such vessel, but not in any case to exceed ten dollars.

3. For hearing and settling disputes of which the Port Warden is authorized to take cognizance, and for the fees on appeal to the Council of the Quebec Board of Trade, a sum to be graduated according to the value of the thing, or the amount in dispute, but in no case to exceed twenty dollars.

4. The foregoing maximum rates, comprehending the fees for the incidental proceedings, certificates, and copies, may be altered and apportioned, and the particular service distinguished, and the fee therefor assigned, and the person by whom the same shall be paid may be indicated in such way as the Council of the Board of Trade may from time to time appoint; and all rates and fees so established shall be subject to the approval of the Governor in Council, who shall have power from time to time to reject or modify and alter such fees and rates.

28. The Council of the Board of Trade may, if they see fit, at any time fix and appoint a salary to the Port Warden, to include his own remuneration and that of his deputies, and his expenses of office or otherwise, as may be arranged, and for any period during which the Port Warden shall be paid by salary such balance as may appear, by his certified annual return, to be in his hands over and above his salary (or, over and above his salary, that of his deputies and his expenses of office, if the same are not included in his salary) shall be forthwith paid by the said Port Warden to such person as the Board of Trade shall depute to receive the same.

29. The penalty for any and every infraction or breach of the 12th section of this Act shall be the sum of forty dollars; and for every infraction or breach of the 16th section of this Act the sum of twenty dollars; and any and every such penalty as aforesaid shall be recoverable in the manner prescribed by the Interpretation Act, in cases where penalties are imposed, and the recovery is not otherwise provided for.

30. The Port Warden shall keep such books and accounts, and shall report yearly to such department or officer, and at such time in each year, and in such form, and with such accounts and details, as the Governor may from time to time direct.

(*) See page 290.

An Act to amend the Acts relating to Port Wardens at Montreal and Quebec.

[*Assented to 3rd May*, 1873.]

IN further amendment of the Act passed by the Legislature of the late province of Canada in the 26th year of Her Majesty's reign, chapter 42, "to provide for the appointment of a Port Warden for the Harbour of Montreal;" and in amendment of the Act passed by the same Legislature, in the 29th year of Her Majesty's reign, chapter 59, amending the same; and also in amendment of the Act passed by the Parliament of the Dominion of Canada, in the 34th year of Her Majesty's reign, "to provide for the appointment of a Port Warden for the Harbour of Quebec,"—Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

MONTREAL.

1. No officer of Customs shall grant a clearance to any vessel wholly or partly loaded with grain, for the purpose of enabling her to leave the port of Montreal for any port not within the limits of inland navigation, unless nor until the master of such vessel produces to him a certificate from the Port Warden or his deputy, to the effect that all the requirements of the 12th section of the Act first cited in the preamble of this Act, have been fully complied with, if such grain be laden in bulk; nor unless or until such master produces to him a certificate from the Port Warden or his deputy that all the requirements of the 14th section of the said Act, as hereby amended, have been fully complied with if such vessel be wholly or partly laden with grain, otherwise than wholly or partly in bulk; and if any vessel, wholly or partly loaded with grain, attempts to leave the port of Montreal without a clearance, for any port not within the limits of inland navigation, any officer of Customs, or any person acting under the direction of the Minister of Marine and Fisheries, or the chief officer of the river police, may detain such vessel until such certificate is produced to him.

2. So much of the fifth section of the Act secondly cited in the preamble of this Act as imposes a penalty of 40 dollars for every infraction or breach of the 12th section of the Act first cited in the preamble of this Act is hereby repealed, and the penalty for every infraction or breach of the said 12th section shall be 800 dollars.

QUEBEC.

3. No officer of Customs shall grant a clearance to any vessel wholly or partly laden with grain, for the purpose of enabling her to leave the port of Quebec for any port not within the limits of inland navigation, or within the dominion of Canada, unless nor until the master of such vessel produces to him a certificate from the Port Warden or his deputy, to the effect that all the requirements of the 12th section of the Act thirdly cited in the preamble

of this Act have been fully complied with, if such grain be laden in bulk; nor unless or until such master produces to him a certificate from the Port Warden or his deputy, that all the requirements of the said Act, as hereby amended, have been fully complied with, if such vessel be wholly or partly laden with grain, otherwise than wholly or partly in bulk; and if any vessel, wholly or partly loaded with grain, attempts to leave the Port of Quebec for any port not within the limits of inland navigation, or within the dominion of Canada, without a clearance, any officer of Customs, or any person acting under the direction of the Minister of Marine and Fisheries, or the chief officer of the river police, may detain such vessel until such certificate is produced to him.

4. So much of the 29th section of the Act thirdly cited in the preamble of this Act as imposed a penalty of 40 dollars for any and every infraction or breach of the said 12th section of the said Act is hereby repealed, and the penalty for any and every infraction or breach of the said 12th section of the said Act shall be 800 dollars.

General Provisions.

5. The 14th section of the Act first cited and the 14th section of the Act thirdly cited in the preamble of this Act are hereby repealed, and the following section substituted for the same, as the 14th section of each of the said Acts respectively:—

"The master of any vessel, wholly or partly laden with grain for any port not within the limits of inland navigation, shall, before proceeding on his voyage, or clearing at the Custom House for the same, notify the Port Warden, whose duty it shall then be to proceed on board such vessel, and examine whether she is in a fit state to proceed to sea or not; if she is found unfit, the Port Warden shall state in what particulars, and on what conditions only she will be deemed in a fit state to leave, and shall notify the master to leave the port until the required conditions have been fulfilled; and in case of the master refusing or neglecting to fulfil the same, the Port Warden shall notify the Collector of Customs, in order that no clearance may be granted for the vessel until such required conditions have been fulfilled, and a certificate thereof granted by the Port Warden or his deputy."

6. The Port Warden, at either of the ports aforesaid, may, in any case where he thinks it right and necessary, initiate proceedings, and hold surveys, and obtain process, as if required by the parties concerned under the provisions of the Acts cited in the preamble of this Act; and whenever the Port Warden is mentioned in any provision of any of the said Acts, or in this Act, such provision shall always be understood to apply to the Deputy Port Warden.

7. The whole of any pecuniary penalty imposed by this Act, or

(a) See page 290.

by the Acts hereinbefore recited, or any of them, shall belong to the Crown, and shall be paid over to the Receiver-General by the officer or person receiving it, and shall be appropriated in such manner as the Governor-General in Council may direct; anything in the said Acts, or any of them to the contrary notwithstanding.

TARIFF OF FEES approved of by the Council of the Quebec Board of Trade.

First Survey of Hatches and Cargo including Certificates.

	Dols.	Cents.
For vessel of 400 tons and under	2	50
400 tons to 700 tons	3	50
700 tons and upwards	5	00
Every subsequent survey on cargo on board of the ship	1	00
Every copy of certificate when required	0	50
For certificate under seal or copy of record or document	1	50
Every copy of certificate when required	1	00
Every survey of damaged goods on wharf or in store, with certificate, value 200 dollars and under	2	50
Over 200 dollars in value	5	00
Survey of hulls, sails, spars and rigging of any vessels damaged on arriving in port in distress, for the first survey	8	00
Every subsequent survey	5	00
Certificate of survey repairs and seaworthiness... ...	1	00
Survey to know if ship is seaworthy, with a certificate	2	50
Survey that repairs ordered have been made, or cause of unseaworthiness removed, with certificate... ...	2	50
Valuation of vessels for average, under 500 tons ...	5	00
500 to 1,000 tons, 1 dollar per 100 tons, but not to exceed	7	50
Measurement of a vessel's beam for towage	1	00
Certificate when required	0	25
For inspection of a vessel intending to load with certificate (and payable by the vessel), all the surveys ...	5	00
For hearing and settling disputes on matters of which the Port Warden is authorised to take cognizance, a sum to be graduated according to the value of the thing or amount in dispute,—from 1 dollar to	20	00
For certificate under seal or copy of record or document	0	50
Every copy of every certificate if required	0	25
For estimating cost of repairs to a damaged vessel to be graduated according to the extent of damage,—from 2 dollars 50 cents. to	20	00

	Dols.	Cents.
For the appeal of any case from the Port Warden to the Board of Examiners, payable by the party against whom the decision is given, in no case more than	20	00
Port Warden's expenses to be paid when his services are required outside of the limits, viz., the Commissioner's Wharf to the east, and the Montreal Ocean S.S. Company's Wharf to the west.		

(Signed) JOHN DICK, *Port Warden.*

Quebec, June, 1871.

MONTREAL.

RULES and BYE-LAWS of the Office of the Port Warden, Harbour of Montreal.

SECTION I.

General Regulations.

1. Every master of a vessel on arriving in port from any place not within the limits of inland navigation shall (in order to enable the Port Warden to grant the necessary certificate for the vessel's clearance at the Custom House) proceed to the Port Warden's office, and make a report of his vessel and cargo, and receive a copy of these rules and bye-laws.

2. Any party interested and objecting to the application by the Port Warden of these regulations can obtain an investigation by the Board of Examiners by requisition to the Secretary of the Board of Trade; and their decision shall be final and conclusive. The party appealing to them shall pay the fees and charges of the investigation, not, however, to exceed 20 dollars, if the Board of Examiners so decide.

3. The Port Warden shall keep in his office records in full of all his proceedings, together with statements of the results of all examinations and inquiries made by him; which records may be inspected during business hours by any parties interested. He shall keep on record all certificates granted by him, and grant duplicates of the same, as hereafter provided, on payment of the regular fee.

4. All notifications and requests to the Port Warden must be made at his office in writing, and duly entered by the Port Warden in a book to be kept for that purpose.

5. The Port Warden, when requested in writing by the parties interested, shall arbitrate upon any dispute between the master or consignee of any ship or vessel and any proprietor, shipper, or consignee of cargo. He shall also, when required, estimate the value and measurement of any vessel, when the same is disputed or otherwise needed.

(*) See page 290.

6. The Port Warden may, in any case where he thinks it right and necessary, initiate proceedings and hold surveys, and obtain process, as if required by the parties concerned; and whenever the Port Warden is mentioned in these rules and bye-laws it shall also always be understood to apply to any deputy Port Warden who may be appointed.

SECTION II.

Regulations regarding Vessels Inwards.

7. Any vessel arriving in port can have its hatches examined and opened by the Port Warden; and should they be opened by any other person, and any portion of the cargo be found to be damaged, these facts shall be *primâ facie* evidence that such damage occurred in consequence of improper stowage or negligence on the part of the persons in charge of the vessel; and such default shall, until the contrary be shown, be chargeable to the owner, master, or other person interested as part owner of the said vessel.

8. The master of any vessel which has broken bulk for the purpose of lightening, or other necessary purposes previous to her arrival, shall immediately on the discovery of any damaged cargo notify the Port Warden, and proceed to hold a survey on the same, in the manner prescribed by law, before the same shall be moved out of the place in which it was originally stowed.

9. The Port Warden, on being notified and requested by any of the parties interested, shall proceed on board of any ship, steamer, or other vessel, or to any warehouse, dwelling, or wharf, and examine the condition or stowage of any cargo, and any goods damaged or said to have been damaged on board of any vessel, and examine and ascertain the cause of such damage. He shall also have cognizance of all surveys of vessels or cargoes damaged, and, on payment of the regular fees, shall give certificates of such surveys.

10. The Port Warden shall, when required, be surveyor on any vessel which may have suffered wreck or damage, or which shall be deemed unfit to proceed on her voyage. He shall examine the hull, spars, rigging, and all appurtenances thereof; shall specify what damage has occurred, record in the books of his office a full and particular account of all surveys held on such vessel. He shall call to his assistance, if necessary, in such survey one or more carpenters, sailmakers, riggers, shipwrights, or other persons skilled in their profession, who shall each be entitled to a fee not exceeding two dollars for the first survey and one dollar for each subsequent one on which their services may be required to aid him in the examination and survey; but no such surveyor must be interested in the case. The Port Warden shall also, if required, be surveyor of the repairs necessary to render such vessel seaworthy; and his certificate that these repairs have been properly made shall be evidence that the vessel is seaworthy.

11. No goods, vessels, or other property shall be sold as damaged for account of underwriters unless a regular survey and condemnation has previously been had; and the Port Warden shall in all such cases be one of the surveyors.

12. It shall be the duty of every auctioneer making a sale of any vessel condemned, or ship's materials, or goods damaged on board a ship or vessel, whether seagoing or of inland navigation, sold for benefit of underwriters or others concerned, in the city of Montreal, to file a statement of the same at the office of the Port Warden within 10 days after such sale. No underwriters' sale shall take place until after at least two days' public advertisement in not less than two English newspapers, and one French newspaper in the city of Montreal; and such sale shall not be at an hour earlier than 12, nor later than 3 o'clock in the day.

SECTION III.

Regulations affecting Vessels Outwards.

13. The following scale is the limit to which ships of ordinary build should be laden; subject, however, in all cases, to the judgment of the Port Warden:—

Vessels from	12 to 14	feet depth of	hold to have	2½	inches	
„ „	12 to 17	„	„ „	2¾	clear side	
„ „	17 to 20	„	„ „	3	to each foot	
„ „	20 to 22	„	„ „	3¼	depth of	
„ „	22 to 26	„	„ „	3½	hold.	

14. No vessel over 450 tons register shall be permitted to load an entire cargo of grain in bulk, oats excepted. All vessels loading grain will be required to have a bulkhead not less than six feet from the bow and one foot from the stern.

15. No vessel will be permitted to take more than 12,000 bushels of grain in bulk without a bulkhead to divide it into compartments, no compartment to contain more than 12,000 bushels.

16. All vessels (loading grain in bulk) of 400 tons to be platformed or dunnaged not less than 9 inches at the keelson, and 12 inches at the bilge; ships of 1,200 tons, 12 inches at the keelson, and 25 inches at the bilge, including the thickness of lining boards; other sized ships in proportion; and lined with well-seasoned timber. Vessels under 600 tons register to have 2 inches of dunnage, over that tonnage to have 3 inches of dunnage, between the grain and other cargo. All vessels to be dunnaged and lined to the satisfaction of the Port Warden.

17. The master of any vessel intending to load grain in bulk for any port not within the limits of inland navigation shall, before taking in any such grain, notify the Port Warden from time to time, while the different chambers are being prepared, to survey and inspect the said vessel; the Port Warden in such case shall ascertain

(*) See page 290.

whether such vessel is in a fit state to receive and carry the cargo intended for her to its destination; he shall record in his books the condition of the vessel; if he finds she is not fit to carry the cargo in safety, he shall state what repairs are necessary to render her seaworthy; before beginning to load each chamber he shall be careful to see that such chamber is in a fit and proper state and condition to receive grain, and should he deem it necessary he may order that such chamber be properly dunnaged and lined and provided with shifting boards, or that the same be dunnaged, or lined, or provided with shifting boards; and he shall see that the boards and plank used for these purposes are properly seasoned; he shall examine the pumps, and see that they are properly lined and dunnaged; he shall enter in the books in his office all particulars connected with these surveys, and grant the necessary certificates.

18. The pumps of all vessels loading grain in bulk, and when necessary the masts, to be cased in; the casing round the pump to be large enough to allow a man to pass down into the well, not less than 4 feet by 5 feet; the casing to be good workmanship, and of seasoned wood, so that the grain may not pass through. There must be also proper shifting boards on each side, which must be well secured to the stanchions, and the stanchions themselves well secured to the beams and keelson. Shifting boards to extend to at least two-thirds of the depth of the grain space, and to be provided also whenever grain in bags is laden between-decks.

19. Great care should be taken to well fill the vessel with bulk grain under the decks, and it is advisable when vessels are filling up that no more grain should be put on board than the number of labourers employed are able to trim and properly stow.

20. The following regulations with reference to the quantity of grain in bulk which vessels may be allowed to take in proportion to their tonnage, are to be observed in future, subject, however, to the judgment of the Port Warden :—

450 to 500 tons,	42	bushels of	60 lbs.	per register	ton.
500 to 550	„ 41	„	„	„	
550 to 600	„ 40	„	„	„	
600 to 650	„ 38	„	„	„	
650 to 700	„ 37	„	„	„	
700 to 750	„ 35	„	„	„	
750 to 800	„ 34	„	„	„	
800 to 850	„ 33	„	„	„	
850 and upwards,	32	„	„	„	

Should the vessel's carrying capacity in the lower-hold exceed the scale, enough may be taken to raise the grain to not over 6 inches above the beams, provided always that the prescribed draught of water, when the vessel is loaded, be not exceeded.

Oats may be carried in bulk to any extent, irrespective of the tonnage of the ship, but subject to such regulations with reference

to dunnage, lining, and shifting boards as the Port Warden may prescribe.

21. The master of any vessel wholly or partly laden with grain for any port not within the limits of inland navigation shall, before proceeding on his voyage, or clearing at the Custom House for the same, notify the Port Warden, whose duty it shall then be to proceed on board such vessel and examine whether she is in a fit state to proceed to sea or not; if she is found unfit, the Port Warden shall state in what particular and on what conditions only she will be deemed in a fit state to leave, and shall notify the master not to leave the port until the required conditions have been fulfilled; and, in case of the master refusing or neglecting to fulfil the same, the Port Warden shall notify the collector of Customs, in order that no clearance may be granted for the vessel until such required conditions have been fulfilled, and a certificate thereof granted by the Port Warden or his deputy.

22. No officer of Customs shall grant a clearance to any vessel, wholly or partly loaded with grain, for the purpose of enabling her to leave the port of Montreal for any port not within the limits of inland navigation, unless nor until the master of such vessel produce to him a certificate from the Port Warden or his deputy to the effect that all the requirements of the 17th clause of these regulations have been fully complied with, if such grain be laden in bulk; nor unless or until such master produces to him a certificate from the Port Warden or his deputy that all the requirements of the 21st clause of these regulations have been fully complied with, if such vessel be wholly or partly laden with grain, and if any vessel wholly or partly laden with grain, attempts to leave the port of Montreal without a clearance, for any port not within the limits of inland navigation, any officer of Customs, or any person acting under direction of the Minister of Marine and Fisheries, or the chief officer of the river police, may detain such vessel until such certificate is produced to him.

SECTION IV.

Penalties and Fees.

23. The penalty for any and every infraction or breach of the 8th clause of these regulations shall be the sum of 40 dollars; and for every infraction or breach of the 17th clause of these regulations the sum of 800 dollars; and for every infraction or breach of the 12th clause of these regulations the sum of 20 dollars; and every and each such penalty as aforesaid shall be recoverable in the manner prescribed by the Interpretation Act, in cases where penalties are imposed, and the recovery is not otherwise provided for.

24. The following fee shall be payable to the Port Warden by the parties employing him; but in case of a survey of cargo alleged to be improperly stowed the party in the wrong shall pay the fee.

(*) See page 290.

Fees.

	Dols.	Cents.
First survey of hatches and (or) cargo, including certificate	1	00
Every subsequent survey	0	50
Every survey on damaged goods, on wharf or in store, with certificate value 200 dols. and under	1	00
Over that value	2	00
Survey of hull and (or) sails, spars, and rigging of any vessel damaged or arriving in port in distress ...	5	00
Every subsequent survey	1	00
Survey to ascertain if ship is seaworthy, with certificate	2	50
Survey that repairs ordered, if not seaworthy, have been made, with certificate	2	00
Valuation of a vessel for average under 500 tons ...	5	00
500 to 1,000 tons, 1·00 dols. per 100 tons, but not to exceed	7	50
Survey of cargo reported to have shifted, with certificate	4	00
Measurement of a vessel's beam for towage	1	00
Extra copies of certificate, when required	0	25
For inspection of the lining of a vessel intending to load grain—200 tons and under 400	3	00
For inspection of the lining of a vessel intending to load grain—400 tons and under 600	4	00
For inspection of the lining of a vessel intending to load grain—600 tons and under 800	5	00
For inspection of the lining of a vessel intending to load grain—800 tons and upwards	6	00
General superintendence of loading on vessels which do not pay fees otherwise	5	00
Certificate of general loading where fees have not otherwise been paid to the amount of 3·00 dols. ...	1	00
Settling disputes between master and consignee of ship and owner of cargo	2	50
For certificate under seal or copy of record or document	1	00
Every extra copy of every certificate	0	25
For the appeal of any case from the Port Warden to the Board of Examiners, payable by the party against whom the decision is given, in no case more than	20	00

Table of Export Fees.

To be collected by the Port Warden of Montreal, under the Act 29 Vict., cap. 59, 1865, in amendment of the Act 26 Vict., cap. 52, 1863, and approved by his Excellency the Governor-General in

Council, on shipments by sea-going vessels loaded for ports other than those in British North America.

On Grain.

	Dols.	Cents.
For every 1,000 bushels and every proportionate quantity of Wheat and Peas	0	15
Ditto Ditto Barley ...	0	12
Ditto Ditto Oats ...	0	10
Ditto Ditto Indian Corn..	0	10

On Flour and Meal.

	Dols.	Cents.
On every 1,000 barrels, and proportionate charge for every fractional quantity thereof	0	75
Ashes per barrel	0	02
Apples per barrel	0	00¼
Coal oil per barrel	0	00½
Ores and minerals per ton (ballast excepted)	0	04
Oil cake per ton	0	03
Phosphates per ton	0	01
Sawn lumber per 1,000 feet	0	00½
Deals, per Petersburgh std. hundred	0	02
Staves, puncheon, per mille	0	08
Staves, pipe	0	30
Staves, West India	0	08
Oxen and horses per head	0	01½
Sheep and hogs	0	00¼
On other articles not herein enumerated, being natural production, per ton	0	02
On other articles not herein enumerated, and shipped from this port, being manufactured in whole or in part, per ton weight or measurement	0	06
And the same on all quantities or parcels of such other goods exceeding in the whole shipment half a ton, though not amounting to one ton weight or measurement; but no fee to be charged in respect to such other articles for any shipment not amounting to half a ton, or any fractional part of a ton, in any shipment exceeding one or more tons.		

(By order of the Board),

D. R. KERR, *Port Warden.*

Port Warden's Office,
Montreal, 1879.

(*) See page 290.

MONTREAL.

SPECIFICATIONS for LINING VESSELS for GRAIN in BULK at Montreal.

The vessel to be divided into bins by bulkheads.

The floor of the bin to be considered as extending from the keelson to the turn of the bilge. The sides of the bin to extend from the turn of the bilge to the deck. The ends of the bin to consist of bulkheads athwartships, extending from ceiling of vessel to the deck or lower-hold beams, as case may be.

The floor of the bin to be laid upon bearing-joists of not less scantling than three by four (3 × 4) inches, set on edge and properly butted to each other, and not to be further apart than two (2) feet from centre to centre.

The ends of all bearing-joists to be properly nailed and secured, to prevent their slipping or shifting, and, where they bear upon the ceiling of the vessel, to be so fitted as to conform to the shape of the ceiling. The bearing-joists to be strutted or blocked from the ceiling of the vessel by scantling of not less than three by four (3 × 4) inches, and at such distances apart as not to exceed seventeen (17) inches from centre to centre, these struts or blocks to be fitted at right angles, or square with the bearing-joists, and to be properly fitted and fastened firmly to the ceiling. The height of bearing-joists to be according to tonnage of vessel.

The boarding of floor of bin to consist of one (1) inch boards laid and space covered with one (1) inch board, so as the overlap will be not less than two (2) inches on each edge, and the ends always to bear on joists, and longitudinally to conform to the ceiling of vessel; all the boarding of floor to be well and sufficiently nailed, and the upper thickness or covering board to have two nails in each joist. All joints to be made close and grain-tight.

The sides of the bin to be furred or dunnaged off from the sides of vessel not less than one (1) inch, the furrings or dunnage pieces for this purpose to be placed not further apart than two (2) feet from centre to centre, and to be boarded over with one (1) inch boards, after the manner of clapboarding, with not less than two (2) inches overlap, as high as two (2) feet above the lower beam, for loose grain. All to be well and securely nailed, and joints made close and grain-tight.

The forward and after bulkheads forming the ends of the bins to have studs in one length, extending from ceiling of vessel to the under side of deck, to be of three (3) inches plank in thickness, and ten (10) inches in breadth, to be of one piece, and placed not over twenty (20) inches apart, and well and securely fastened and cleated at their heels or lower ends, and also braced from one to the other to prevent them shifting, and to be clapboarded after the same manner as sides of bin. The athwartship bulkheads to be built in same manner, and to be properly shored up and fastened.

Shifting boards must be well secured to each side of stanchions, and the stanchions themselves well secured to the keelson and beams, and are to extend to at least two-thirds (⅔) in depth of grain space from lower side of upper-deck beams, and to be of one (1) inch boards in lower-hold on each side of stanchion, and one (1) two (2) inch or two (2) one (1) inch boards in thickness on each side of the stanchions in between-decks, from upper side of lower beam to under side of deck, to be well fastened and properly and sufficiently shored or braced when required, the braces not to be less than three (3) inches by five (5) inches. The stanchions which are required in hatchways to be not further apart than five (5) feet from centre to centre, and well secured at their heads by shores and braces from the carlings of hatches, and between-deck carlings the braces not to be less than three (3) by five (5) inches. If over twelve (12) feet in length to be six (6) by three (3) inches, and properly butted and secured at their ends.

All lumber used to be dry, well-seasoned, and free from rents or shakes and ring or black knots, and the work to be done in a workmanlike manner, to the satisfaction of the Port Warden.

All air streaks or openings through the ceiling of vessel to be closed up and made grain-tight before the lining is put on.

The limber-boards to be taken up and limbers cleaned out, and in vessels or steamers having water-ballast tanks the flooring over tank to be covered, in all cases, by lining-boards.

Should any shores, braces, or any part of the lining be removed at any time by stevedores or others employed by the master of the vessel, the pieces so removed to be replaced before clearance certificate is granted.

All grain covering to be close-boarded, edge to edge, and transverse bearers to be not further apart than three (3) feet; and when different kinds of grain are carried in same bin, the covering to be doubled, and all joints to be made close and grain-tight.

When grain in bags is carried 'tween-decks, the sides of the vessel to be properly dunnaged not less than two (2) inches, all knees of wood or iron to be boxed in properly, so as not to damage grain by damp or sweat.

The pump-well case or passage to extend from the deck after-hatch to the pump-well, close and underneath the deck beams then directly down to ceiling.

The pump-well, chain-locker, and water tanks to be cased with lining-boards made grain-tight.

When flour is carried on top of grain, the boarding between is to be laid double and athwartships, each board to be securely nailed and fastened to prevent its shifting.

(Signed) D. Ross Kerr, *Port Warden.*
Jas. G. Shaw, *Deputy Port Warden.*

(*) See page 290.

(VI.)

AUSTRALIA.

ADELAIDE.

REGULATIONS of the ADELAIDE UNDERWRITERS' ASSOCIATION.

REGULATIONS for Loading Grain and Flour Cargoes at Ports in South Australia.

1. All grain to be shipped in bags.

2. Grain or flour in wooden vessels must be dunnaged with not less than 10 inches on the floor and from 14 to 16 inches on the bilges, with 3 inches on the sides up to the deck, and 2 inches on 'tween-decks. The dunnage on floor, bilges, and 'tween-decks to be laid athwartship.

3. Grain or flour in iron vessels must be dunnaged with not less than 6 inches on the floor, and 9 inches on the bilges, with 3 inches on the sides up to the deck, 2 inches on close and 1 inch on open 'tween-decks. The dunnage on floor bilges and 'tween-decks to be laid athwartship.

4. Shifting boards to be fitted from the foremast to the after-hatch as directed by the surveyors.

5. *Load-line.*—The load-line of wooden vessels to be from 2¾ to 3 inches, and of iron vessels not less than 2½ inches, to every foot depth of hold, according to our surveyor's requirement, to be measured from lowest line of sheer of the upper surface of the deck amidships, to the water when vessel is upright.

By order of the Committee,

(Signed) J. S. TURNER,

Adelaide, 13 November, 1879. *Secretary.*

(VII.)

GERMANY.

KŒNIGSBERG.

Extracts (Rules) from the ALLGEMEINES LANDRECHT (Common Law), with regard to loading ballast or any loose cargoes.

Section 1478. Part II. Tit. 8. Taking in a loose cargo or ballast. The master of the vessel must provide for the safe bulkhead, so that the cargo may not shift.

Section 1479. He must also securely stow the cargo, and well dunnage the same with wood.

Section 1480. The master shall be responsible for any damage occurring from the rules being neglected by him or any of his crew.

Section 1481. In places where there are licensed stevedores, he must direct them not to make any fault in the stowage, and if they will not listen he must protest against them.

Section 1482. Should he neglect to do so, he cannot afterwards plead as excuse any fault of the stevedores.

Section 1483. The master must carefully avoid overloading the ship, and cannot protect himself against his liability for any damage occurring thereby by pleading any requests of the freighter or loader.

Note 30. And still less by pleading ignorance of the capabilities of his ship. Damage done by overloading does not belong to average.

Section 1484. In every case, damage or not, the master must pay a penalty of double the amount of the stipulated freight for every last (two tons) taken in too much to the Master Mariners' Poor Fund.

(Signed) W. J. HERTSLET.

Kœnigsberg, March, 1880.

(VIII.)

BERLIN.

RULES of the INTERNATIONAL UNDERWRITERS' ASSOCIATION.

STOWAGE REGULATIONS for VESSELS with Cargoes of GRAIN, or GRAIN and GENERAL MERCHANDISE, from Ports of the United States of America to European Ports.

The following Rules, which have been approved by the Bureau Veritas, must be observed by all vessels loading grain, insured by members of the International Underwriters' Association.

A.—LOADING all BULK, or part BULK and part BAGS.

I.

The Pump-well.—All vessels must have a pump-well sufficiently large to admit of the passage of a man to the bottom of the hold with room to work conveniently when there, say not less than four feet fore-and-aft, and five feet athwartship.

Access thereto must be practicable at all times either by a manhole through the upper-deck, or by a clear passage way through the 'tween-decks from the after-hatch.

In no case must it be from the main-hatch.

II.

All vessels shall have their ceiling, if necessary, caulked up to the upper turn of the bilges.

The pump-well, chain-lockers, the masts, and water-tanks, whether of wood or iron, must be properly cased to prevent damage.

The air streaks, all knees, the bitts, and open seams must be cleated grain-tight. 'Tween-deck scuppers must be closed.

III.

Dunnage.—All vessels must have a platform in the bottom upon the ceiling, which must rest upon sleepers of scantling 3 × 4 inches,

(*) See page 290.

not more than 12 inches apart, supported by studs of corresponding side, also 12 inches apart, and supplied with good channels for a free draining of the water to the pumps. The platform must be raised in medium vessels at least 12 inches from the flat of the floor, in the bilges 15 inches, and in vessels which are very flat or sharp increased or diminished at the discretion of the inspector. In no case must the platform be laid on loose dunnage, nor must it be laid on the bilge keelsons, even when such keelsons may be more than 12 inches high, but there must always be sufficient room for the free passage of water under it. The platform must be laid with two thicknesses of one-inch boards, overlapping at the edges and ends, and care must be taken that it be perfectly tight to prevent any grain from passing through. The floor is considered as extending from the keelson to the sides of the vessel and not as terminating at the bilge keelsons.

Steamers with a double bottom are not subjected to the prescriptions of this section, but shall have a wooden platform resting upon cross timbers 1½ inches thick. The latter must be provided with watercourses.

The sides of wooden vessels above the turn of the bilges must be ceiled after the manner of clapboarding reversed and properly furred, so as to turn water from the grain, cleated grain-tight to prevent choking of the pumps. For iron vessels it is not necessary to raise the floor, when the cargo platform is sufficiently high, and no ceilings will be required above the fixed platform.

IV.

Transverse and Trimming Bulkheads.—If a vessel cannot be entirely filled, transverse bulkheads of strong boards must be fitted forward and aft at suitable places.

These transverse bulkheads must extend in single-deck vessels or in vessels with one deck and beams from the deck down to the bottom of the hold; in vessels with a 'tween-deck laid forward and aft, or in vessels with a complete 'tween-deck throughout its entire length, they shall extend only from the upper to the lower-deck.

These transverse bulkheads are to be fixed at an angle of 60 or 70 degrees, so that the space enclosed between them is narrower under the deck than at the bottom of the hold; in order more effectually to resist the pressure of the cargo. Vessels with one deck or one deck and beams must have, in addition to the forward and after bulkheads, two trimming bulkheads extending three-quarters down, and so placed that in loading the middle compartment will be entirely filled and the end ones left to trim the vessel.

V.

Shifting Boards.—Vessels up to 33 feet beam must have amidships a longitudinal bulkhead or shifting boards two inches thick, extending from the keelson to the upper-deck on each side of the stanchions.

Vessels over 33 feet beam must have two longitudinal bulkhead or shifting boards each at one-third of the vessel's beam, and extending in vessels with one deck or with one deck and beams from the floor to the upper-deck.

Vessels with two fixed decks, with or without a tier of hold-beams, shall have two longitudinal bulkheads in the between-deck, extending from the upper to the lower-deck, and one longitudinal bulkhead in the lower hold, extending from the 'tween-deck to the keelson.

As the side compartments in vessels having two bulkheads will be the first to be filled up, a board must be left open in the upper part of the bulkheads to allow the grain to be well filled up; the bulkheads will afterwards be carefully closed.

The deck or 'tween-deck stanchions may be double, so as to allow the boards of the longitudinal bulkheads to slide in betweem them. In such case the boards of the bulkhead must be at least four inches thick.

VI.

Stanchions and Studs.—The stanchions not to be removed, but firmly secured with good clamps to the deck-beams as well as to the keelson, and not more than 9 feet apart. In case the stanchions are over 7 feet apart, or if the vessel's depth of hold exceeds 10 feet under the upper or the lower-deck, the longitudinal bulkhead shall further be stayed by shores firmly secured to every alternate stanchion and to the sides of the vessel at one-third of the depth from the deck. The size of the stanchions is regulated by the depth of hold of the vessel. The transverse bulkheads must also have studs of one entire piece of spruce or pine, extending the depth of the vessel, and to be set 18 inches apart. The shores and studs must also rest in good clamps, so that shifting becomes impossible. The shores and studs must not be less than 4 × 6 inches, but for vessels of a greater depth than 14 feet the studs must be 4 × 8 inches.

The forward bulkhead will require extra security.

VII.

Layers of Grain in Bags over the Bulk Cargo.—Vessels which intend to load two-thirds of their cargo in bulk and one-third in bags must have, when bags are stowed on loose grain, a layer of boards under them, to prevent the bags from settling into the bulk cargo. In reference to end compartments, as specified in Rule IV., if not entirely filled, the loose grain must be covered by bags of grain and properly stowed as above.

VIII.

Double-decked vessels are required to leave off the 'tween-deck hatches, and to take up two streaks of 'tween-deck planks on each

(a) See page 290.

side from fore to aft as regulated by the inspector, say about 5 feet from the water-ways, so as to facilitate the gradual filling of the hold when the cargo settles down.

In place of removed 'tween-deck planks, the 'tween-deck must be secured by coins on the top of the beams.

IX.

Materials for the construction of the dunnage and bulkheads must be of good quality and perfectly dry. All unsound knots must be covered.

X.

The inspector must see that the grain is well trimmed up between the beams, and the space between them completely filled.

B.—Loading all Bags.

I.

Vessels being loaded with grain in bags must observe the same rules as specified in I. and II. for vessels loading grain in bulk or part bulk and part bags, with the exception of closing scuppers. The dunnage in the hold must have the same height on the floor and on the bilges as for bulk cargoes, and 4 inches on the sides up to the beams, either clap-boarded from deck to keelson, or entirely covered with sails, so as to prevent any loose grain from running down to the floor of the vessel. If sails are used, they must be of good quality and free from holes.

'Tween-decks must be dunnaged 3 inches from the sides and 2 inches from the deck, and the dunnage laid athwartships, so that the water can run to the scuppers.

II.

Shifting Boards.—A longitudinal bulkhead or shifting boards *amidships*, as specified in V., must extend 6 feet from the beams downward in the hold and 'tween-decks, and may be set 4 inches apart.

III.

Quality of Bags.—Care must be taken that the bags, especially those which are stowed in the ground tier or next to the sides of the vessel, are in perfect order, and that the seams of the bags are inside when stowed against the sides of the vessel, so as to prevent any loose grain from falling down the sides of the vessel. The tiers are to be laid close and well filled.

General Conditions.

I.

Draught of Water.—The draught of water of wooden vessels to be regulated by 3 inches clear side for every foot depth of hold, or, at the discretion of the inspector, measured from the under side of the

deck at the lowest part of the sheer to the water's edge amidships when upright. In wooden vessels having an additional deck put on after construction, or having a light upper-deck, the depth of hold to be measured for draught from original or main-deck. For iron vessels, the draught of water to be regulated by the surveyor.

II.

Before receiving cargo it is requisite to see if the decks and topsides of the vessels are in good condition.

III.

Flat-floored, wall-sided ships should be fitted with bilge pumps.

(Signed) R. ULRICH,
Secretary-General of the International Underwriters' Association.

January, 1880.

Vessels complying strictly with the above rules, and thus loaded under inspection, will be entitled to a certificate to that effect. Applications for inspection must be made in writing, and a fee of 10 dollars will be charged for such inspection and certificate.

(Signed) BELING, NIEMEYER, and WESSELS.

II.

OFFICIAL NOTICE.

MEDITERRANEAN AND BLACK SEA.

Merchant Shipping (Carriage of Grain) Act, 1880.

WHEREAS it is provided by the Merchant Shipping (Carriage of Grain) Act, 43 & 44 Vict., c. 43, section 5, "that the precautions required by the said Act to be adopted by ships laden with a grain cargo at a port in the Mediterranean or Black Sea, or on the coast of North America, shall not apply to ships loaded in accordance with regulations for the time being approved by the Board of Trade:"

Now, therefore, this is to give notice that, in the case of single-decked ships loading a grain cargo at a port in the Mediterranean or Black Sea, where no provision is made for feeding the hold, and where, according to the requirements of section four of the said Act, one-fourth of the grain carried in any one compartment, bin, or division must be in bags, the Board of Trade have approved a regulation that the whole fourth, or any part of the fourth, of the compartment, bin, or division which would, according to the requirements aforesaid, be stowed with grain in bags, may in lieu thereof be stowed with bales of cotton, bales of grass, or bags of flour, or

other suitable cargo; provided always that the substituted cargo be supported on suitable platforms laid on the grain in bulk and be so stowed as to prevent the grain from shifting.

T. H. FARRER, *Secretary.*

THOMAS GRAY, *Assistant-Secretary.*

Marine Department, 20th February, 1881.

III.

OFFICIAL NOTICE.

OATS AND COTTON SEED.

TWO-DECKED SHIPS—MEDITERRANEAN AND BLACK SEA TRADE.

Merchant Shipping (Carriage of Grain) Act, 1883.

WHEREAS it is provided by the Merchant Shipping (Carriage of Grain) Act, 1880, section 5, "that the precautions required by the said Act to be adopted by ships laden with a grain cargo at a port in the Mediterranean or Black Sea, or on the coast of North America, shall not apply to ships loaded in accordance with regulations for the time being approved by the Board of Trade:"

Now, therefore, this is to give notice that in the case of vessels having two or more decks, loading a cargo of oats or cotton seed at a port in the Mediterranean or Black Sea, and bound to ports outside the Straits of Gibraltar, the Board of Trade have approved the following regulation, viz., that oats or cotton seed may be carried in bulk between the decks, provided—

(1.) That the between-deck hatches shall not at any time be put on; and

(2.) That strakes of the deck shall be lifted, or if the deck is an iron deck, sufficient openings shall be provided to admit of the cargo in the between-decks feeding the lower hold; and

(3.) That the precautions specified in sections 4 (*c*) and 4 (*d*) of the said Merchant Shipping (Carriage of Grain) Act, 1880, be adopted.

T. H. FARRER, *Secretary.*

THOMAS GRAY, *Assistant-Secretary.*

Marine Department, 20th February, 1881.

IV.

OFFICIAL NOTICE.

MERCHANT SHIPPING (CARRIAGE OF GRAIN) ACT, 1880.

SINGLE-DECKED SHIPS. APPLICATION FOR APPROVAL.

SHIPOWNERS desirous of obtaining the approval (under section 5 of the Act) of plans of single-decked ships employed in the grain trade, should forward plans to scale, showing the particulars of the arrangements, if any, for feeding the hold, and the provision made to prevent the cargo from shifting. They should also forward precise statements on the following points, viz.:—

1. The date when the vessel was built.
2. For what period she has been employed in the grain trade since that date.
3. Whether during the time she has been employed in that trade she has been a single-decked ship.
4. Whether the ship has carried her cargoes in safety, and whether she has arrived with a list or with her cargo shifted during that period.
5. Whether she is now a single-decked ship.

With reference to single-decked ships already built, the Board of Trade do not intend to give their sanction, if applied for, in respect of such ships which at any time have had more than one deck. In the case of single-decked ships built hereafter for which their sanction is desired under section 5 of the Act, application should be made in sufficient time to give the Board's officers an opportunity of examining the plans carefully, and of inspecting the ships if necessary.

The Board of Trade do not intend to include in their exemption (under section 5) as single-decked ships any ship which, having had two decks, may be or may have been converted into a single-decked ship by removing the lower deck.

T. H. FARRER, *Secretary.*

THOMAS GRAY, *Assistant-Secretary.*

Marine Department, 19th March, 1881.

V.

OFFICIAL NOTICE.

OATS LANDED AT CANADIAN PORTS—TWO-DECKED SHIPS.

Merchant Shipping (Carriage of Grain) Act, 1880.

WHEREAS it is provided by the Merchant Shipping (Carriage of Grain) Act, 1880, section 5, "that the precautions required by the

said Act to be adopted by ships laden with a grain cargo at a port in the Mediterranean or Black Sea, or on the coast of North America, shall not apply to ships loaded in accordance with regulations for the time being approved by the Board of Trade:"

Now, therefore, this is to give notice that in the case of vessels, having two or more decks, loading a cargo of oats at a Canadian port the Board of Trade have approved the following regulation, viz., that oats may be carried in bulk between the decks, provided—

(1.) That the between-deck hatches shall not at any time be put on; and

(2.) That strakes of the deck shall be lifted, or, if the deck is an iron deck, sufficient openings shall be provided to admit of the cargo in the between-decks feeding the lower hold; and

(3.) That the precautions specified in sections 4 (*c*) and 4 (*d*) of the said Merchant Shipping (Carriage of Grain) Act, 1880, be adopted.

T. H. FARRER, *Secretary.*

THOMAS GRAY, *Assistant-Secretary,*
Marine Department, 3rd June, 1881.

VI.

OFFICIAL NOTICE.

BARLEY.

SHIPPED AT PORTS IN THE MEDITERRANEAN AND BLACK SEA.

Merchant Shipping (Carriage of Grain) Act, 1880.
43 *&* 44 *Vict., c.* 43.

WHEREAS it is provided by section 5 of the above-cited Act, "that the precaution required by the said Act to be adopted by ships laden with a grain cargo at a port in the Mediterranean or Black Sea, or on the coast of North America, shall not apply to ships loaded in accordance with regulations for the time being approved by the Board of Trade."

Now, therefore, this is to give notice that the Board of Trade for the time being, and until further notice, have approved of the following regulations with respect to the loading of barley shipped at ports in the Mediterranean or Black Sea, viz.:—

Single-Decked Ships.

1. That in the case of single-decked ships loaded in accordance with plans submitted to and approved by the Board of Trade, and whose names are included in the lists of ships issued by the Board of Trade, for the information of consular officers at ports in the

Mediterranean and Black Seas, the precaution as to carrying a fourth of the grain cargo in bags shall not apply in ports in the said seas.

Ships having Two Decks.

2. In the case of ships having two decks and loading a grain cargo at a port in the Mediterranean or Black Sea, barley may be carried in bulk in the 'tween-decks, provided that—

(*a.*) Grain-tight feeders be fitted from the lower hold through the hatches to the uppermost deck; such feeders to contain not more than six per cent. and not less than three per cent. of the quantity carried in the hold or compartment they feed.

3. Or (in lieu of the regulation contained in the paragraph 2 (*a*) above) barley shipped at a port in the Mediterranean or Black Sea may be carried in bulk in the 'tween-decks, provided—

(*a.*) That the between-deck hatches shall not at any time be put on; and

(*b.*) That strakes of the deck be lifted, or if the deck is an iron deck, sufficient openings be made through the deck in the wings, which with the open hatches shall admit of the cargo in the between-decks feeding the lower hold.

4. The regulations contained in this paragraph (No. 4) shall also be observed whether the ship is loaded under the regulation contained in paragraph No. 2 above, or in accordance with the regulations contained in the paragraph No. 3 above; that is to say,

(*a.*) There shall be longitudinal grain-tight shifting boards in accordance with sub-section (*c*) of section 4 of the said Act, and the grain shall be properly stowed, trimmed, and secured, as required by sub-section (*d*) of the said section 4.

(*b.*) Feeders shall be fitted to feed the grain carried in the between-decks, such feeders to contain not less than two per cent. of the compartments they feed.

(*c.*) The space in the 'tween-decks in which barley in bulk is carried shall be bounded at each end by grain-tight transverse bulkheads or partitions extending from deck to deck.

(*d.*) The ship shall not be overloaded.

5. If at any time it should appear to the Board of Trade that the above regulations or any of them insufficiently provide for the safety of the ship, and should therefore in their opinion be revoked and withdrawn; or that they need alteration; the Board of Trade will revoke, withdraw, or alter them accordingly.

T. H. FARRER, *Secretary.*

THOMAS GRAY, *Assistant-Secretary.*

Board of Trade, Marine Department, August, 1881.

EXTRACTS

FROM A MEMORANDUM PREPARED BY SIR T. H. FARRER IN NOVEMBER, 1875, UPON THE RESULTS OF THE REPEAL OF THE NAVIGATION LAWS IN 1849 (a).

AFTER mentioning certain qualifications necessary to be taken into account in considering his Memorandum, Sir T. H. Farrer writes as follows :—

"Remembering that the returns for the earlier period give a number of wrecks smaller, and an aggregate of registered tonnage greater, than it really was; remembering also that the earlier returns are for the United Kingdom only, whilst the later returns of wrecks and tonnage are for the Empire, and remembering also the increase of collisions and of dangers arising from increased speed, we have the following results :—

Percentage of loss of ships and of life between 1818 and 1836.

Between 1836 and 1842.

Between 1818 and 1836 (taking the estimate of the Committee of 1836 for the later period) the loss of ships had increased 50 per cent., and the loss of lives 31 per cent., whilst the shipping had remained about the same in amount. Between 1836 and 1842, the loss of ships and of life had remained about the same, so far as we can judge, whilst the number of ships had increased by 18 per cent., the tonnage by 29 per cent., and the Foreign employment by 45 per cent.

Between 1836 and 1862.

"Between 1836 and 1862, the loss of ships had increased by 67 per cent., of tons 193 per cent., and of life by 32 per cent.; whilst the number of ships had increased by 100 per cent., the tonnage by 158 per cent., and the Foreign employment by 226 per cent.

Between 1862 and 1872.

"Between 1862 and 1872, the loss of ships had increased by 9 per cent., of tons 27 per cent., and of life by 50 per cent.; whilst the number of ships had decreased by 5 per cent., but the tonnage had increased by 22 per cent., and the Foreign employment by 81 per cent.

Between 1836 and 1872.

"Between 1836 and 1872, the loss of ships had increased by 83 per cent., of tons 273 per cent., and of life by 97 per cent.; whilst the number of ships had increased by 91 per cent., the tonnage by 215 per cent., and the Foreign employment by 489 per cent.

(a) See Introduction, page 28.

Summary of comparison.

"In other words, whilst for every *ship* lost in 1833-4-5, there were 3,794 tons on the register, and 7,714 tons employed in the Foreign trade of the United Kingdom, for every *ship* lost in 1870-1-2, there were 6,547 tons on the register, and 24,909 tons so employed; whilst for every 100 *tons* lost in 1833-4-5, there were 2,656 tons on the register, and 5,401 tons employed in the Foreign trade of the United Kingdom, for every 100 *tons* lost in 1870-1-2, there were 2,242 tons on the register, and 8,529 tons employed in the Foreign trade of the United Kingdom; and whilst for every *life* lost in 1833-4-5, there were 2,276 tons on the register, and 4,628 tons employed in the Foreign trade of the United Kingdom, for every *life* lost in 1870-1-2, there were 3,635 tons on the register, and 13,831 tons so employed."

Parliamentary Papers relating to the Commercial Marine of Great Britain, presented 1848.

In another part of the same Memorandum, Sir. T. H. Farrer quotes from the Parliamentary papers presented in 1848, certain conclusions drawn by Mr. Murray, then Assistant Under-Secretary at the Foreign Office, from a great number of replies of Her Majesty's Consuls to a circular signed by Mr. Murray, as to the character and conduct of British shipmasters and seamen at that period.

Conclusions of Mr. Murray in 1844.

The conclusions drawn by Mr. Murray from these reports are given in his letter of the 1st January, 1844, where he says "that the character of British shipping has declined, and that the character of Foreign shipping has improved;" and are again given in his Memorandum of the 22nd November, 1847, where he says "that the condition of British shipping according to evidence from the ports of Foreign States may not unjustly be termed discreditable to this country; that British ships are allowed to be sent to sea commanded and navigated in a manner which injures British interests and reflects discredit upon British intelligence;" that in only three reports out of 65 is it stated that the condition of British shipping had improved rather than declined; that the Commercial Marine of Great Britain is stated in the majority of the reports to have become lowered in the estimation of foreigners; and that Foreign ships are chartered in preference to British vessels."

and 1847.

Education, character, and behaviour of British Merchant Officers at that period.

Speaking, still at the same period, of the education, character and behaviour of British Merchant Officers, Mr. Murray sums up the Consular Reports as follows:—"It is stated from various parts of the world that persons placed in command of British ships are so habitually addicted to drunkenness as to be unfitted for their position, and it will be seen that Her Majesty's Consuls allude specifically to the notorious incapacity and gross intemperance, and to the ignorance and brutality of British shipmasters, many of whom are totally devoid of education. In several reports it is stated that there are honourable exceptions to the unworthy class of masters, thus showing that among British masters frequenting Foreign ports bad conduct and ignorance is the rule, and intelligence and ability the exception; that on the other hand Foreign masters are educated, sober, intelligent men, capable of commanding

respect and of maintaining discipline on board their ships, and that Foreign seamen are consequently more orderly."

This is a melancholy report of the British shipmasters of 30 years since, and we have seen that the Committee of 1836 had previously reported most strongly in the same sense, pages 2 and 3.

Reference by contrast to the opinion of Mr. W. S. Lindsay's Committee of 1860.

Sir T. H. Farrer however invites us to "contrast with these passages the opinion expressed by Mr. W. S. Lindsay's Shipping Committee of 1860: 'Your Committee cannot conclude this part of their report without bearing testimony in approbation of the system established in recent years for the examination of masters and mates of merchant ships. A marked improvement is undoubtedly visible in this class of officers, and nearly every witness has concurred in recognising the practical advantages of the system.'"

A marked improvement in conduct and efficiency of masters and mates.

"Opinions of Consuls in 1869, No. c. 690, 1872," to the same effect.

"Again, the replies of the Consuls to Mr. Lefevre's question in 1869 convey an impression of very great improvement in the officers; not so much from any positive statements, as from the general absence of the unfavourable comments which so remarkably distinguished the Reports of 1843-7. In the few cases in the Reports of 1869 where the masters are spoken of unfavourably, it is their bad manners, their carelessness about their cargoes, and occasionally their drunkenness which are specially mentioned. But these unfavourable comments are few, and are confined to particular classes of ships. The officers of steamers are almost invariably well spoken of."

Similar opinion of Royal Commission on Unseaworthy Ships. Preliminary Report, 1873, Parl. Paper, c. 858, 1/73.

"Finally the Royal Commission on Unseaworthy Ships say that it is admitted that shipmasters have of late years improved."

"I think, therefore (Sir T. H. Farrer proceeds to say) that although there may still be too many cases of want of education, coarseness of manners, or even of drunkenness, amongst certain classes of our merchant officers, we may fairly conclude that since 1850 their character and education has, on the whole, very much improved. Whether, as some of the Consuls suggest, they are inadequately paid for the responsible functions they have to perform, is a question which I cannot answer, and with which Government cannot meddle. It is, undoubtedly, much to be desired that for this large and important class there should be more of *esprit de corps*, more of an established rank in society, and more possibility of attaining posts of competency and dignity. Anything which will raise the merchant officer in his own estimation, and in that of society, will do much to raise the character of our Mercantile Marine."

Sir T. H. Farrer's conclusions.

Sir T. H. Farrer's own conclusions in 1875 upon the whole subject of his enquiry, are as follows:—

1. "That the British Merchant Navy has since the repeal of the Navigation Laws increased much more rapidly than it did before that event."

2. "That the increase has been principally in the form of steamships, the most valuable form of shipping property."

3. "That the employment of British shipping has increased in a still faster ratio than the shipping itself."

4. "That the increase has been not only positively greater since the repeal of the Navigation Laws than it was before, but that British shipping has gained on the shipping of other nations, both in the enormous trade of our country, of which it carries a larger portion than it did formerly, and in the trade of Foreign countries also, so that it now carries a far larger and more valuable proportion of the trade of the whole world than it ever did."

5. "That the trade in passengers and in the more valuable class of goods which require certainty, safe loading, and dispatch, is more than ever in our hands."

6. "That the estimation in which British shipping is held by Foreign shippers has greatly improved during the last thirty years."

7. "That the opinion of Her Majesty's Consuls abroad concerning the condition of our shipping is much more favourable than it was thirty years ago."

8. "That the condition and character of our merchant officers has much improved."

9. "That while the condition of the seamen employed in British steamers trading from the United Kingdom, who form about a third of all the seamen employed in British ships in that trade is decidedly improved, the condition of the seamen employed in British sailing vessels is still very far indeed from what could be desired, and that the supply of good sailors is not equal to the demand."

10. "That there is no ground for supposing shipwrecks and loss of life from shipwrecks to have become more frequent in late years (a). On the contrary, from the earliest period at which we have records down to the present time, the ratio of loss to the whole Merchant Navy, has been and is still decreasing, and this, notwithstanding the experimental character of shipping enterprise during the introduction of iron as a material, and steam as a motive power."

(a) It will be observed that this statement was made in the year 1875. In some later years, and notably in 1882, the loss of life has been very large. (Mr. Chamberlain's reply to a Deputation of Shipowners, March, 1883. *Nautical Magazine*, Vol. III., No. 18, 1883, page 253.)

CASE OF THE "ORION" STEAMSHIP (a).

PROSECUTION OF THE MASTER AND SECOND MATE (SCOTLAND).

—o—

CULPABLE Homicide—Culpable Neglect of Duty and Loss of Life. Held, 1st, that these were substantially one charge whenever an accident happened which occasioned loss of life; 2nd, direction to jury that when the Crown had proved an accident by loss of life in a vessel under the panel's command, it lay on them to prove their innocence of all blame.

SUMMING UP OF THE LORD JUSTICE CLERK (b).

The LORD JUSTICE CLERK, in charging the jury, observed, "that as had been remarked in many cases, there really was no difference between the crime of culpable homicide and culpable and reckless neglect of duty, which resulted in the loss of life, and the jury must, therefore, under their charge, consider the case as one of culpable homicide. Intention to do wrong was not part of the crime of culpable homicide; if intention was proved under such a charge, it would amount to murder. The crime of culpable homicide was committed whenever a person unintentionally committed an act whereby the life of another was lost, or where he had failed to perform his duty, when charged with the preservation of life, without having a sufficient excuse for such neglect, and life was lost in consequence; and it was the wish of the Court to express this the more strongly, as they were of opinion that the introduction of two charges, amounting in law to the same offence, under circumstances such as those which had been proved in the course of this investigation, was inexpedient, as tending to distract and confuse the minds of the jury."

"The principles of law, the Court was bound to lay down to the jury, had been much considered in recent cases, particularly that of Paton and McNab, November, 1845, Brown, Vol. II., p. 515, and it consisted in this: 'That any person placed in a situation in which his acts may affect the safety of others must take all precautions to guard against the risk to them arising from what he is doing.' That would also be the principle adopted and enforced by the Court in the cases referred to by the counsel for the panel, though, no doubt, exceptional

(a) See pages 15 and 95.

(b) Pamphlet by Mr. Thomas Gray on "Wrecks and Misconduct at Sea," written in 1871, revised in 1873, reprinted from the *Nautical Magazine*.

expressions might be found in almost every case, occasioned by the peculiarity of the facts proved at the trial. The jury must take into consideration the whole indictment, as forming one substantive charge: and on the proof which had been adduced they would consider whether it was sufficient to establish the charge which had been preferred against the panels respectively.

"It was unnecessary that the panels should be guilty to the same extent of culpable neglect of duty which occasioned loss of life. There might be innumerable degrees of guilt under such a charge, occasioned not merely by the amount of recklessness displayed, but by the duty and responsibility which the party had undertaken. The principle however being, as before stated, that a party charged with the care of life was bound to exercise to the utmost extent all the caution and care within his power; such an occurrence as that before the jury, where a vessel was shown to have been sailing for a long distance unusually near shore, and at length, immediately after seeing Portpatrick Harbour Light, continuing the same course, until the vessel struck on a well-known rock, on a calm and comparatively clear night, threw on those on whom her management depended the *onus* of showing respectively that they had done everything within their power to prevent the occurrence of such a catastrophe. No doubt the guilt might arise from totally different circumstances; that of the captain from improperly leaving his vessel in charge of the second mate; whilst that of the mate might arise from the manner in which he exercised the trust reposed in him; but though the circumstances which tended to establish the charge might be totally different, that would not affect the question, as to whether both could be convicted under the indictment.

"It was not a relevant defence for the captain to say, that the mate had navigated the vessel in a more careless and reckless manner than usual, if he, the captain, was not justified in committing her to the care of the mate at all. On the other hand, it would be equally no defence to the mate to say, that the captain having improperly committed the vessel to his care, he had so completely neglected the charge he had undertaken, as after repeated warnings, to run on shore by a course of reckless navigation, whereby the vessel was wrecked and large loss of life was occasioned. The jury would consider the facts under reference to the libel, and see whether or no there was charged against the panels neglect of duty of that species which has been proved as affecting each, as it would not do to convict them on belief that there was some other duty, not charged in the libel, which had been neglected by either or both of them, the observance of which might have averted the catastrophe.

"The duty of the party entrusted with the care of life must necessarily vary according to circumstances, and the capability of ordinary endurance for its discharge; thus it would not be contended that a person in command of a ship sailing to a distant port,

through open seas, was bound to exercise, or could by possibility exercise the same amount of endurance and watchfulness in the management of the vessel, which the captain on a short course, and especially on a coasting voyage, would be bound to exercise, any more than it would be contended that there was no difference in the amount of watchfulness required by the captain in a vessel at sea, whether the weather was calm or tempestuous.

"The responsibility of each voyage was much affected by the character of the voyage itself, the weather in which it was performed, and the ordinary physical capacity of a healthy man to perform the duties he undertook to discharge. It was a common remark, that persons circumstanced as the captain was, would be sure to take every known precaution to avert danger from himself, and it had been strongly urged by his counsel that he had done nothing on the occasion of the accident different from what was done according to the practice of all captains on that navigation. If, however, the jury were of opinion that there was culpable neglect of duty in what he did, that it was not necessary to retire to rest at the period in question, and that there was culpable neglect of duty in leaving his post, it was no answer in law for him to say that others had been in the practice of committing the like wrong. Nothing could be more mischievous than such a doctrine, as it was the occasion of almost all like accidents. Men became accustomed to perils, and daily became more and more daring and rash in the exercise of their avocations; and it was surely no answer, when at length the danger which had been so often run, resulted in the death of some fifty beings, to urge that hundreds daily before had been in danger by a course of like reckless conduct. It was much to be feared that captains often ran close to the shore to avoid currents and tides in order to save time; and having escaped disasters on repeated occasions by such courses, they become over confident, and at length adopt a course which at first they would have thought it insane to attempt. That was the great occasion of accidents of all kinds; but the leading principle to be adopted in judging of such cases, was not how near the coast a captain might venture without danger, but how far off he ought to keep in order to avoid all risk whatsoever; and as before mentioned, it was incumbent on the captain to show that he had not authorized a course to be followed, within which there was any risk, as also that he had not improperly delegated his charge to the mate before, in law, the jury would be entitled to acquit him of blame for the accident which had occurred.

"It was in evidence that there was no division of labour or trust by the employers, between the captain and the mate, and more especially, there was none between captain and second mate. There was thus a delegation of duty by the captain to an inferior officer which, if unwarranted in itself, could not be justified by any instructions in the service. This took place on a voyage, which on

ordinary occasions did not exceed fifteen hours, and which on the occasion in question commenced at Liverpool at four o'clock in the afternoon of a beautiful summer day, when the vessel was steered down the Mersey by the river pilot, thus for that portion of the voyage lessening the captain's responsibility. Could it be said then that the captain was not bound to have started fresh from Liverpool, so as to have enabled him to remain on watch during so short and easy a voyage. It was quite different, as before stated, from the case of captains out at sea. It was not pretended that the captain's duties required him to superintend the loading of the vessel, and this still further left him without excuse on the score of physical inability to maintain the watch throughout the night.

"It had been urged that the course kept by the ship from the Mull of Galloway northwards, on the night of the accident, was pretty much the same as that observed usually by steamers trading between Liverpool and Glasgow. No doubt companies were anxious to make quick voyages for the sake of profit, and captains were anxious to please their employers by performing the passage as quickly as possible. The evidence as to this was somewhat contradictory (which his Lordship read), but the fair import of the whole appeared to be, that they were much nearer the coast during the whole course than usual.

"If the jury thought such was the case, it bore upon the captain in two ways; first in respect of having sanctioned a course so near the shore, as he was shown to have been on deck long after passing the Mull of Galloway. And, second, in having committed, under such circumstances, the charge of the vessel to another. It had been said, that there was nothing more than error in judgment (a) attributable to him. That he did err in judgment, as before mentioned, was undoubted. Had his conduct been intentional to produce the disaster which occurred, his crime would have been that of murder. The question was, did he, charged with the care of a vessel containing so many passengers, culpably leave her to the care of another, by whose mismanagement the wreck was occasioned.

"Honesty of intention, and anxiety to serve the interests of his employers did not form a justification even for directing or sanctioning a course so near in shore. His primary duty, and one which no commands from the company could absolve him from, although it might render them guilty in respect of having issued them, in case of their directing so unsafe a passage, was to preserve the lives of the passengers who sailed in the ship, and on the whole matter the jury would have to say as regarded the captain whether or not he had been guilty of the culpable and reckless neglect of duty charged, either by directing or sanctioning an unsafe course,

(a) See page 96.

or by having unnecessarily and culpably delegated his duty to the mate.

"As before mentioned, the Crown having proved the accident to have occurred under his command, it fell upon him to prove that he was entirely innocent in both respects. If the jury thought he was culpable in *any* degree in respect of the matters charged in the indictment, they were bound to find him guilty, leaving the question of punishment for the determination of the Court, who would consider the amount of guilt.

"As regarded the case of the mate, the case that had been principally made for him as to the deflection of the binnacle compass, entirely failed. It was proved beyond doubt that the land was visible the whole way from the Mull of Galloway, northwards. It was in vain then to talk of the deflection of the compass on a coast so well known as Wigtonshire, and the jury would consider whether or not it was consistent with innocence that he did not keep further out at sea, when the land within sight was a rocky shore, more especially after receiving warnings from the seamen who were on watch, and who admonished him of the fact, and more especially after passing so close to Portpatrick Harbour, the light of which was seen and recognised. Had he called the captain when he perceived himself so near the shore, and had the latter sanctioned the course which the mate was then following, the mate might have been as much relieved as the steersman, who obeyed his (the second mate's) orders. Nothing of the kind, however, was shown to have been done by him, and the jury would say, having regard to the doctrines of law laid down in the case of the captain, whether the mate could be entirely innocent of the neglect of duty charged, so as to enable them to acquit him."

His Lordship also remarked, in reference to the case of the boats, that "although the Court thought that there was not enough to warrant the jury in convicting in respect of neglect of duty as to them, yet the facts proved, and the lamentable results which had happened from the state in which the boats were at the time of the accident, and their original construction, was most important, as showing the consequences of inefficient boats in case of accidents. Should it be found on any future occasion that life was lost in consequence of inability to launch or navigate the boats, arising from such impediments as the coverings which had been spoken to in this case, or any other device resorted to for the purpose of economy, either of the boats themselves or the vessel to which they belonged, grave criminal responsibility would arise, as well to the captain, who neglected to use all appliances in his power, to keep them in proper order, as to the proprietor who should fail to have sufficient boats in the first instance, or refused proper allowance to have them maintained."

The jury, by a majority, found the captain guilty of culpable but

not reckless neglect of duty, and unanimously found the panel (the second mate) guilty of culpable and reckless neglect of duty as libelled.

LORD WOOD, in passing sentence, remarked as follows: "The ship left Liverpool on the 17th of the month of June, a fine vessel, one of the finest in the trade, a vessel fully equipped for the voyage, having on board at the time a valuable cargo, and no less than 200 people, consisting of crew and passengers, and she was a vessel with a steam-engine of great power, and capable of being propelled at the rate of fourteen or fifteen knots an hour. When such a vessel, with such a cargo, and with so many persons on board, left the port of Liverpool, it appears to me that every man who had any charge in the navigation of her should have left it, with the thought indelibly impressed on his mind that no vigilance, no care, and no anxiety, which he could bestow in the navigating of the vessel to her port of destination should be wanting."

"Your Lordship emphatically stated that it was the paramount duty of every one navigating such vessels to consider first the safety of the ship and passengers. The contrary course appears to have been followed here. The captain chose a coasting course, apparently trying what peril the vessel could be put into, and yet bring her to her port of destination, instead of his thinking only how he could carry her there in safety. And carried she might have been, for it was a clear course, a known course—it was an accustomed voyage, and she was under the charge of those who knew every part of the voyage. Now, my Lords, in these circumstances, the jury has found, by a majority, the master guilty of culpable neglect of duty as libelled, and they have unanimously found the second mate guilty as libelled. The second mate has been found guilty of culpable and reckless neglect of duty in navigating this vessel, by which neglect the vessel was wrecked, and that melancholy loss of life charged in the indictment occasioned. I am sorry to say that I feel it impossible, with such a verdict, in such a case, to propose any other sentence than one of seven years' transportation. Any other sentence would be an inadequate one, and would neither satisfy the law nor the great interests at stake. But we are enabled, and I am most happy, by the verdict, to make a distinction in the amount of punishment between the second mate and the master, because the jury in his case have found him only guilty of culpable neglect of duty, and not of reckless, as well as culpable, neglect of duty, and certainly it is a very material difference in the verdict with regard to him. If the verdict had included in it recklessness on his part, of course there could have been no other sentence than one of transportation; but I feel, as everyone must feel, that in dealing with the case of a person such as the master of this vessel, no sentence which the law could pronounce would make any impression, unless it was one that would bear severely on

him. In these circumstances, making every allowance for the distinction which the verdict admits of in the case of the parties, and by every consideration which I have been able to bring to mind, and I have every desire to make such a distinction in the case as is consistent with the ends of justice, I have, after much consideration, come to the conclusion that the sentence may be mitigated to one of imprisonment, although it must be one of time, and such a sentence as those in charge of such vessels must feel that, for the very slightest neglect of duty, which is followed by such disastrous results as occurred in this case, and even far less, they must answer to the law. I therefore propose a sentence of imprisonment for eighteen calendar months."

LORD IVORY and the LORD JUSTICE CLERK concurred in the sentence.

INSTRUCTIONS AS TO PRELIMINARY INQUIRIES (a).

The following are the principal instructions issued for the guidance of officers appointed to take depositions and make preliminary inquiries in the United Kingdom :—

These officers are :

1. Inspecting officers of Coastguard.
2. Principal officers of Customs.
3. Receivers of Wreck (b).
4. Persons appointed by the Board of Trade.

Instructions Issued 1865.

Preliminary Inquiries into Wrecks and Casualties at Sea.

Cases in which preliminary Inquiries are to be made. Merchant Shipping Act, 1854, s. 432.

Provision is made for full inquiry in the following cases, viz. :—

Whenever any ship is lost, abandoned, or materially damaged on or near the coasts of the United Kingdom :

Whenever any ship causes loss or material damage to any other ship on or near such coasts ; in other words, in all cases of *collision* causing loss or material damage :

Whenever, by reason of any casualty happening to or on board of any ship on or near such coasts, loss of life ensues :

Whenever any such loss, abandonment, damage, or casualty happens elsewhere, and any competent witnesses thereof arrive or are found at any place in the United Kingdom.

By whom preliminary inquiries are to be made.

This Inquiry may be conducted by various persons, as mentioned in the Act ; but, except in any special cases in which instructions to the contrary are issued by the Board of Trade, the Inquiry is to be made by the inspecting officer of the division or the officer in command of the Coastguard station ; or if there are no Coastguard stationed at or near the spot, by the Receiver of Wreck if such Receiver is also an officer of Customs.

Ships to which preliminary inquiries extend.

The powers of instituting these preliminary Inquiries under the 432nd section of the Act extends as follows, viz. :—

(a.) To all *British* ships sustaining or causing any loss, abandonment, damage, or casualty, wherever it may be sustained or caused ; and

(b.) To *Foreign* ships, when the loss, abandonment, damage, or

(a) See Chapter I., page 30.

(b) Generally officers of Customs who would be properly described as principal officers under the Merchant Shipping Act, 1854, s. 432, and the Merchant Shipping Act, 1876, s. 32.

casualty is sustained or caused on the coasts of the United Kingdom, *i.e.*, within three miles of the shore, or within the headlands of a bay, or within any estuary or frith.

And the officers of the Customs and Coastguard have full powers to examine any competent witness of the facts, whether such witness does or does not belong to the vessel which has caused or sustained the injury or loss, and whether such person is or is not a British subject.

Place where Inquiry is to be made in different cases. S. 482.

In cases where a casualty happens on the coast, and the ship or any of her crew are still there, the officer named above will proceed to the spot as soon as possible and make the Inquiry before any of the necessary witnesses leave.

In cases where the casualty happens at sea or off the coasts, and any of the crew or other witnesses arrive at any place within the officer's district, he will make the Inquiry in like manner.

In cases where he thinks it probable that other important witnesses can be found elsewhere, he will give notice to the officer of the district in which they are to be found, in order that the latter officer may make inquiry.

Inspecting officers of Coastguard and officers of Customs may summon parties to give evidence on *preliminary Inquiries.*

If any person should refuse to attend and answer, or to produce necessary evidence, or should impede the Inquiry, the officer conducting the Inquiry will call their attention to the powers given to him by the 432nd, and 14th, 15th, and 16th sections of the Merchant Shipping Act, 1854; and if they still refuse he will proceed against them before two Justices for the penalties. Whenever he has any reason to think it may be necessary to proceed against them for refusing or neglecting to attend, he will serve them with a form of summons under his hand.

Importance of investigating the *avoidable* cases of wreck and loss.

In making the Inquiry the attention of the officer should be specially directed to the question whether the casualty happened from avoidable or from unavoidable causes. Amongst the former, his attention should be particularly directed to the following:—

Unseaworthiness or insufficient equipment of the ship:

Insufficient or improper manning:

Improper loading, overloading, and bad stowage:

Explosions arising from the insufficiency of boilers and machinery:

Misconduct, incompetency, or neglect on the part of the master, officers, or crew:

Neglect of the Regulations for Preventing Collisions at Sea:

Ignorance of lights or other sea marks, or of the navigation of the sea or coast:

Neglect of heaving the lead:

Too great speed under the circumstances:

Non-employment of properly qualified pilots:

Ignorance, or incompetency, or misconduct of pilots

Defective charts:

Defective or improperly adjusted compasses:

Deficiencies in the lights, leading marks, or buoys on the coast:

Want of harbours of refuge or other means of safety:

In making inquiry on the subject of harbours of refuge, the officer should endeavour to ascertain and state as accurately as he can, whether one of the harbours of refuge recommended by the Royal Commissioners would have probably saved the ship, and if so, which of them.

Regulations for preventing collisions.

A copy of the Regulations for Preventing Collisions at Sea is printed in the Appendix.

Foreign ships.

They apply to *all* ships, whatever their nationality, within the limits of British jurisdiction, and to all British ships, as well as to all ships belonging to the countries and places therein mentioned, whether within British jurisdiction or not, viz.:—(*See* Regulations for Preventing Collisions at Sea, page 401).

In cases of wilful default the person offending is to be deemed guilty of a misdemeanour, and if any damage arises to person or property from the non-observance by any ship of these regulations, such damage is to be deemed to have been occasioned by the person in charge of the deck at the time, unless it is shown that the circumstances of the case rendered a departure from the rule necessary.

In cases of collision the officer making the Inquiry should be careful to ascertain if possible whether the regulations for preventing collisions have been attended to, and, if not, by whom they have been neglected. The party by whom the regulations have been infringed will, in the absence of proof to the contrary, be considered as the party in fault.

Merchant Shipping Amendment Act, 1862, s. 30.

If the officer making the Inquiry has any reason to suppose that a ship is not properly provided with lights and with the means of making fog-signals, in accordance with the regulations, he should apply to the inspector of lights and fog-signals for the district to make an examination and to report. The inspector of lights and fog-signals is also the surveyor of passenger steamships.

S. 31.

Under section 31 of the Merchant Shipping Act, 1862, rules made under the authority of any Local Act, concerning lights or signals to be carried by vessels navigating the waters of any harbour, river, or other inland navigation, or concerning the steps to be taken by such vessels, continue in force nothwithstanding the regulations in the Appendix.

Ships in collision to render assistance to each other. Merchant Shipping Act, 1873, s. 16.

The officer should also in cases of collision ascertain if possible whether the person in charge of such ship has rendered to the other ship and her crew and passengers such assistance as might (without danger to his own ship) be practicable and necessary, in order to save them from any danger caused by the collision.

This is very important, as in case the person in charge fails to render assistance without reasonable excuse the collision will, in the

absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default.

Great care to be exercised in making Inquiry.

In making these inquiries, the officer will remember that he is exercising a highly important and quasi-judicial function, and that his reports may be made the foundation of proceedings deeply affecting the interests of individuals, or of important measures for the general benefit of trade. He must therefore take all the means in his power to arrive at the truth.

Officer may call for log-book, &c., and examine on oath.

He will observe that he may, if necessary, examine upon oath; but he will probably seldom find it necessary or desirable to do so. He will also observe that he has power to call for the log-book and other documents and papers.

In all cases where there is any point which it is important to establish, or any question of fact in dispute or in doubt he will take the evidence in writing.

Report to Board of Trade.

In every case the officer will when the Inquiry is concluded, or sooner if he thinks it desirable, send a report addressed to the Secretary, Board of Trade, containing the result of the Inquiry and such of the evidence as may be important. He will exercise his discretion in making the report more or less full as circumstances may require and it may be included in the return made for the purposes of the Wreck Register.

In cases of a grave nature.

In cases of a graver nature, or where the evidence is conflicting, the report should be made separately. In all cases of casualties arising from any of the avoidable causes mentioned above, the report and the statement of the evidence bearing on the point should be full and complete.

Examination by Receivers in Case of Ships in Distress.

Examination by Receivers of Wreck, s. 448, Merchant Shipping Act, 1854.

The 448th section of the Merchant Shipping Act, 1854, provides that every Receiver, whether appointed under the Merchant Shipping Act or under the former Act, shall institute an examination upon oath in the case of ships in distress on the coasts of the United Kingdom, *i.e.*, within three miles of the shore or within the headlands of any bay, or within any estuary or frith.

It is to be instituted as follows, viz.:—

When to be instituted.

(1.) In the case of *British* ships—

(*a.*) When the distress arises or is caused within the limits named; and

(*b.*) When the distress arises or is caused out of those limits, and the ship is in distress when she arrives within them.

(2.) In the case of *Foreign* ships—

Only where the distress arises or is caused within such limits.

Meaning of "ships in distress" as to

This examination, in the generality of cases will be in the form of a deposition or oath. It is to be *taken only* when ships

are driven ashore, or sustain material damage, or are so injured as to render them unfit for sea without repairs or discharging cargo, or in other cases in which the insurance of the ship or cargo is affected. As it is made with a view to questions affecting insurance and other matters of importance, special attention should be paid to make it complete and accurate.

which examination is to be made.

The statements obtained by these examinations and by the preliminary inquiries referred to above are of great importance, as they are made whilst the facts are fresh in the minds of the persons examined; and besides being of great value for statistical purposes, the depositions are frequently made use of when ulterior proceedings are instituted in courts of law, and are generally referred to by Proctors in order to see that the opponents are not setting up a false case.

Importance of examinations and inquiries.

Where the master or mate or any other person belonging to a ship refuses to attend before a Receiver for the purposes of this examination, the Receiver of Wreck or Justice of the Peace will by summons under his hand compel attendance. A form of summons will be found in the Appendix, but it must not be used unless the parties *refuse* to attend. The necessary expenses of the person summoned is to be tendered in cash in such cases, and a receipt for the amount is to be taken.

Receiver can summon master, &c., to make a deposition. (ss. 448, 14, 15, 16.)

A copy of the deposition is to be sent with all possible despatch to the Board of Trade and to the Secretary for managing the affairs of Lloyd's, Royal Exchange, London.

Copy of depositions to be sent to Lloyd's.

In cases of collision between a British ship and a Foreign ship happening beyond the limits of British jurisdiction named above, the master of the British ship is not to make a deposition under section 448 of the Act, but his statement should be taken under section 432 of the Act, and should not be sent to Lloyd's.

Deposition under section 448 not to be taken in cases of collision happening elsewhere than on the coast of the United Kingdom.

In the case of a Foreign vessel arriving in the United Kingdom after having suffered damage by collision with a British ship out of the limits of the United Kingdom, the Receiver of Wreck, or officer of Customs, or Coastguard (as the case may be) at the place where she arrives, should endeavour to obtain particulars from the master and crew, but he will observe from the foregoing observations, that if they refuse the information, he has no power to compel them to give it.

Receivers and other officers to endeavour to obtain particulars from Foreign ships in *all* cases.

It is, however, presumed that notwithstanding this limitation of power, the officer at or near the place where the ship arrives will, with a little management, generally obtain sufficient information to enable him to fill up a Wreck Return to be sent to the Board of Trade.

Officers will generally obtain particulars.

INSTRUCTIONS SUBSEQUENT TO 1865.

Circular 736 (a).

BOARD OF TRADE, *June*, 1874.

INSTRUCTIONS IN RESPECT OF WRECKS AND CASUALTIES.

DEPOSITIONS.

Depositions taken by Receivers of Wreck under section 448 of the Merchant Shipping Act, 1854, should be taken at the earliest possible moment after the casualty.

The value of the depositions will in many cases be increased if a member of the Coastguard, or some other person possessing nautical knowledge, be associated with the Receiver in taking them.

To meet those cases to which the Receiver is unable to attend with promptitude, the Receiver should, if he think it necessary, at once apply to the Board of Trade for his next officer or some competent officer to be appointed to take depositions. The Board of Trade will in every such case communicate with the Board of Customs with a view to making the appointment.

Persons appointed to take depositions should in all cases do their utmost to obtain the attendance of masters, mates, boatswains, pilots, salvors, or other persons who may be able to give an account of any wreck or casualty; and the Receiver should not when necessary hesitate to exercise the powers vested in him of requiring their presence by summons under his hand.

The Lords Commissioners of the Admiralty have decided that at places within a Coastguard division the services of the Coastguard should always be given, when necessary, in cases where a deposition is to be taken by a Receiver under the Act.

In some Receivers' districts the attendance of an officer or other member of the Coastguard may not always be necessary when a deposition is taken, or cannot always be obtained. In such cases his attendance will be dispensed with. But unless special directions to the contrary are given, the presence of an officer or other member of the Coastguard force should be obtained by the Receiver. The member of the Coastguard force who will assist the Receiver, will sometimes be the Inspecting Officer of the division, but the Receiver will probably find, especially at outlying stations, that the chief officer, a commissioned or chief boatman in charge of the nearest or most convenient station, will be able to give all the assistance required.

No new arrangements respecting the attendance to be given by the Coastguard at each port for taking depositions, should be made without the approval of the Board of Trade and of the Admiralty.

The attention of the Receiver, and of the officer who co-operates with him, should be specially directed to the taking of depositions as

(a) All the instructions issued between 1865 and July, 1864, were embodied in this Circular.

a very grave and important proceeding. And those officers should bear in mind that their duty is more than the mere taking down in writing of any narrative (probable or improbable) that may be related. The examination should be careful and searching, accurately recording the statement of each deponent with a view to its being verified by oath in accordance with the Act.

When the Receiver thinks it necessary, the following persons should be examined in each case, viz., the master, the pilot or officer in charge of the ship at the time the accident occurred, the boatswain, carpenter, and at least one able seaman, especially the person believed to have most knowledge of the facts, and, when the vessel is a steamship, the engineer on duty.

Each deponent should be examined as soon after the casualty as possible.

Each deponent should be examined separately.

No one is to be in the room during the examination except the deponent, the Receiver, the Deputy-Receiver, or other person, if any, authorized to conduct the examination in his stead, his nautical adviser, if any, the Receiver's clerk, and an interpreter when necessary.

If a deponent shows a disinclination to answer questions of which he may reasonably be expected to have knowledge, a note should be made to that effect.

The interpreter (if any) is to be appointed by the Receiver, and must be independent of and in no way connected with the Receiver, on the one hand, or the owners, master, agents, underwriters, &c., of the ship and cargo, on the other.

The interpreter's oath will be administered by the Receiver as follows:—" You shall truly and faithfully interpret the evidence about to be given, and all other matters and things touching the present examination, and the (French, &c.) language into the English language, and the English language into the (French, &c.) language, according to the best of your skill and ability. So help you GOD."

In England and Ireland, in the case of a person having no conscientious objection to be sworn, the oath should be administered as follows:—" You swear the contents of this your deposition are true. So help you GOD." The deponent will then kiss the book, and the Receiver will fill up and sign the jurat at the foot of the deposition.

In England and Ireland, in the case of a member of the Society of Friends or other person who is unwilling from conscientious motives to be sworn, the deponent will say, " I, *A. B.*, do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is according to my religious belief unlawful; and I do also solemnly, sincerely, and truly affirm and declare, &c.," and the jurat will be altered to " *Affirmed* at, &c."

In Scotland, in the case of a person who has no conscientious objection, the deponent will say, "I swear by Almighty God, and as I shall answer to God at the great Day of Judgment, that I will tell the truth, the whole truth, and nothing but the truth;" and in the case of a person having conscientious objections, "I, *A. B.*, do solemnly, sincerely, and truly affirm and declare, that the taking of an oath is according to my religious belief unlawful; and I do also solemnly, sincerely, and truly affirm and declare, that I will tell the truth, the whole truth, and nothing but the truth."

In cases where a book is used it is held in the right hand. In Scotland the deponent is desired to hold up the right hand while repeating the oath or affirmation.

The deposition or declaration in Scotland will begin with the place and date, thus:—

"At the day of , 18 .

"In presence of *A. B.*, Receiver of Wreck at ."

(here state the authority under which he is entitled to administer oaths or affirmations) "Compeared" (name and designation of witness) "who being solemnly sworn and examined, depones" or "who having made the affirmation or declaration under 28 Vict., c. 9, declares."

BOARD OF TRADE, Marine Department, *August*, 1879.

INSTRUCTIONS TO RECEIVERS OF WRECK.

DEPOSITIONS under Section 432 of the MERCHANT SHIPPING ACT, 1854, and under Section 32 of the MERCHANT SHIPPING ACT, 1876.

It has come to the knowledge of the Board that misapprehension exists on the part of some Receivers as to the persons on whom power is conferred by section 432 of the Merchant Shipping Act, 1854. This section does not empower Receivers of Wreck, but does specially empower principal officers of Customs, to make inquiry into casualties, and yet principal officers of Customs who are also Receivers of Wreck frequently sign depositions under this section not as principal officers of Customs but as Receivers of Wreck. In other cases persons who have no authority in any capacity under section 432 forward to the Board of Trade depositions purporting to be taken under that section.

The Receiver's attention is therefore specially called to the fact that the only officers legally authorised to take statements or depositions under section 432 of the Merchant Shipping Act, 1854, are—

1. Inspecting officers of Coastguard.
2. Principal officers of Customs.
3. Persons appointed for the purpose by the Board of Trade.

It follows that every statement should be signed by one of these officers, and that the title which qualifies him to take it should be added to his signature.

The Board desire that the Receiver of Wreck should, whenever practicable, take these statements in his capacity of principal officer of Customs, and that he should be assisted in all cases involving important and difficult questions of a nautical character by an officer of the Coastguard. In large ports and extensive districts it is, however, sometimes impossible for Receivers to perform all the duties in connection with wreck depositions, and, in order to relieve them of some of the work, they are instructed to nominate such of the Deputy Receivers and other persons in their districts as they might think qualified and necessary for appointment as "persons" within the meaning of section 432 of the Merchant Shipping Act, 1854.

Receivers have not, however, except in a few instances, availed themselves of the help offered, and, having regard to the irregularities above referred to, the Board would be glad to receive from the Receiver a full report as to his present arrangements for obtaining reports of casualties and taking depositions under sections 432 and 448 of the Merchant Shipping Act, 1854, and, in the event of his requiring assistance, a statement of the names, rank, &c., of the persons whom he would wish to be appointed to take depositions under one or both of the above sections.

In some districts subordinate officers of the Coastguard and Customs hold appointments as Deputy Receivers of Wreck, and have therefore power to take depositions under section 448, though not under section 432, but as some of these officers are men of imperfect education, and have been appointed solely in connection with salvage of wreck, the Receiver should exercise great care in advising any extension of their duties or powers.

INSTRUCTIONS TO LOCAL MARINE BOARDS (a).

M. 11,890.

INQUIRIES.

BOARD OF TRADE, 17*th September*, 1878.

SIR,—I am directed by the Board of Trade to inform you that they have had under further consideration the method of procedure at Investigations held before the Local Marine Boards into charges of incompetency or misconduct preferred against certificated officers in the Mercantile Marine, also the duties of Secretaries of Local Marine Boards in connection therewith.

The result at which they have arrived is as follows:—

1. As regards procedure they think it advisable that the proceedings at these Investigations should, as far as practicable, be assimilated to those of Courts of Inquiry into Wrecks, and that a clear distinction should be drawn between, on the one hand,—the judicial functions exercised conjointly by the Local Marine Board and the Stipendiary Magistrate or Legal Assistant who assists them; and, on the other hand,—the functions of the Solicitor (or Counsel) who represents this Department.

On the preferment of a charge against a certificated officer, the Board of Trade will, if they have "reason to believe" that the said officer "is from incompetency or misconduct unfit to discharge his duties," and it is decided to hold an Investigation into his conduct before a Local Marine Board, make an order for the holding of such Investigation before the Local Marine Board most conveniently situated for the hearing of the case, and will at the same time, at ports where there is no Stipendiary Magistrate, appoint a Legal Assistant to the Local Marine Board.

The Board of Trade will also appoint a Solicitor (or Counsel) to represent this Department.

The remuneration of the Legal Assistant will be three guineas for one day and two guineas per diem for any subsequent days over which an Investigation may extend.

On receipt of his appointment, and of the official papers connected with the case, it will be the duty of the Solicitor who represents the Board of Trade:

(a) *See* Chapter VII., page 145.

(1.) To prepare a summons ([a]), and the "copy of the Report or Statement of the case," required by sec. 23, sub-sec. 6, of "The Merchant Shipping Act Amendment Act, 1862," and cause them to be served on the defendant.

(2.) To prepare summonses ([b]) and cause them to be served on such witnesses as it may be considered necessary to call in order to elucidate the facts of the case.

(3.) ([c]) To take, or cause to be taken, the statements of the various witnesses who are to be examined at the Investigation, or, if already taken, to supplement them if necessary, by additional proofs; and to take such other steps as may be necessary in order to prepare the case for hearing at the earliest possible moment.

(4.) To give due notice to the Secretary of the Local Marine Board when the case is ripe for hearing.

(5.) To conduct the Investigation before the Local Marine Board as quasi-prosecutor, to examine the witnesses summoned to give evidence, and after their cross-examination by the defendant or his Solicitor to re-examine the said witnesses.

(N.B.—The Court should, in the exercise of its discretion, allow either party to call further witnesses if they think the justice of the case requires it.)

The duties of the Secretary of the Local Marine Board in connection with Investigations are enumerated in the annexed Instructions. The Board of Trade will be glad to receive any observations the Local Marine Board may have to offer with regard to the above proposals, which are a modification of those contained in their letters of 30th June, 14th September, and 25th August, 1877.

I am, Sir, your obedient Servant,

GEORGE J. SWANSTON.

INSTRUCTIONS TO SECRETARIES.

When a Local Marine Board have been directed to institute an Investigation into the incompetency or misconduct of a certificated master, mate, or engineer, the Board of Trade regard it as part of

([a]) Printed Summons Forms can be obtained from the Secretary of the Local Marine Board.

([b]) Printed Summons Forms can be obtained from the Secretary of the Local Marine Board.

([c]) In the preparation of the case the Solicitor should not merely get up the case as quasi-prosecutor, but should endeavour to elicit and lay before the Court, the entire facts as they bear both for and against the certificated officer.

the duty of the Secretary of the Local Marine Board, and included within the duties for which he receives a salary from the Mercantile Marine Fund, to perform the duties following, viz. :—

1. To give due notice of the time and place fixed for the Investigation to the Solicitor or Counsel who represents this Department.
2. To attend the Investigation and to take notes of the evidence.

   If the Secretary, being a Solicitor, be appointed Legal Assistant to the Local Marine Board for the Investigation, the duty of taking notes is to be performed by some other person, who should, if possible, be a salaried officer of the Local Marine Board. If there be no such officer whose services are available for this duty, a sum not exceeding 10s. per diem may be paid to a person specially employed by the Local Marine Board to perform it.
3. To draw up the Report upon the case for the Board of Trade, and transmit it to them with the notes of evidence and official papers, as soon as possible after the close of the Inquiry.

INSTRUCTIONS RELATING TO NAVAL COURTS (*).

GENERAL.

NAVAL Courts are British Tribunals to investigate facts and try cases connected with British shipping in ports or places out of Her Majesty's Dominions, when occasion demands the prompt interference of British authority.

Naval Courts, therefore, must not be held in Great Britain or a British possession abroad.

They should not be held in any case in which a Consul can deal satisfactorily with the matter without the assistance of a Naval Court, and in all cases where practicable it will be well that a consultation should be held between a Naval Officer and a Consul before summoning a Naval Court.

The cases in which, according to law, a Naval Court may be summoned, are the following:—

(*a.*) If a master or any of the crew of a British ship make a complaint to a Consul or a Naval Officer which appears to such officer to require immediate investigation;

(*b.*) Whenever the interest of the owner of any British ship or of the cargo of any such ship appears to such officer to require it;

(*c.*) Whenever any British ship is wrecked or abandoned, or otherwise lost at or near the place where such officer may be, or whenever the crew or part of the crew of any British ship which has been wrecked, abandoned, or lost abroad, arrives at such place.

These cases may generally be classed under the following heads:—

Crimes committed on the high seas and abroad.

Offences against discipline.

Misdemeanors and other offences against the Merchant Shipping Acts.

Wrecks and Casualties.

Misconduct and incompetency of Officers of the Mercantile Marine

(*) *See* Chapter IX., page 158.

holding certificates granted by the Board of Trade, or Colonial Certificates of the same validity.

Loss of or danger to health or life on board British ships, however caused, whether by accident, improper or insufficient provisions, water, accommodation, medicines or anti-scorbutics, defective equipment, machinery, or condition of hull, cargo dangerous in itself or dangerously stowed, or otherwise.

Danger or damage to property in ships or cargoes.

Crimes committed upon the High Seas and Abroad.

By section 263 (6) /54, Naval Courts may exercise the same powers as are vested in British Consular Officers by section 268, as to sending for trial to the United Kingdom or any British Possession, any master, seaman, or apprentice belonging to any British ship charged with any offence mentioned in section 267, or with any offence on the high seas.

In cases of murder or manslaughter, or mutiny or assault of a serious character, if the charges are sustained by the evidence, the prisoner should be sent to the nearest British Possession or to Great Britain for trial.

In cases of a less grave character, such as mutiny unaccompanied by violence, or assault without serious consequences committed under great provocation, if the distance to the nearest tribunal competent to try the offence be great, and expense and difficulty likely to be involved in the prosecution, the Court may exercise a wise discretion by punishing the offence, provided it be punishable by a Naval Court in a summary way; and by making such arrangements as to the discharge of the prisoner from the ship or otherwise as may prevent any danger of the recurrence of evils.

It should always be borne in mind that it is useless to send prisoners for trial unless the proceedings of the Court have been perfectly formal, and sufficient witnesses are sent to procure a conviction.

Offences against Discipline.

The ordinary offences against discipline which most frequently come under the cognizance of Naval Courts are those specified in section 243/54. This section also prescribes the limit of punishment for each offence.

The Consul may sometimes find himself able to dispose of minor cases without recourse to a Naval Court; but in serious cases, such as desertion of such a wholesale character or at such a critical time as to imperil the ship, or insubordination and disobedience to orders nearly amounting to mutiny, a Court should, if practicable, be summoned.

Misdemeanours and other Offences against the Merchant Shipping Acts.

By section 18/55 Naval Courts summoned to hear a complaint touching the conduct of a master, mate, or seaman, of a British ship, have power, in addition to the foregoing offences, to try misdemeanours and other offences *against the Merchant Shipping Acts*, committed by a master or any of the crew of a ship, in respect of which two justices would, if the case were tried in the United Kingdom, have power to convict summarily.

The following misdemeanours are among the most important:—

Breach of duty, &c., endangering ship, life, or limb, section 239/54.

Wrongfully forcing a seaman ashore, or leaving him behind, section 206/54.

Leaving seamen behind without the formal consent of a public officer in a colony, or a Consul in a Foreign country, sections 207, 208/54.

Failing to render assistance, &c., in cases of collision, section 16/73.

The other misdemeanours and offences which Naval Courts have power to try under section 18/55 will be found in the Appendix of "Offences against the Merchant Shipping Act cognisable by two Justices." They are numerous and varied, but comparatively few of them will come under the cognisance of Naval Courts (a).

The punishment for the above misdemeanours and other offences under the Merchant Shipping Acts is limited to imprisonment for any period not exceeding six months, with or without hard labour, or to a penalty not exceeding £100. (*See* section 518 (2) and (3) /54.)

Naval Courts before exercising jurisdiction under section 18/55 should bear in mind that:

1. A complaint must be made which appears to the officer summoning the Court to require immediate investigation.
2. The complaint must be made to such officer by the master of a British ship, or by a certificated mate, or by one or more of the seamen belonging to such ship.
3. The complaint must touch the conduct of the master, or one of the crew of such ship.

When the offenders are masters holding certificates, it will generally be better to use only the Court's power to suspend or cancel their certificates and supersede them in command, treating the cases as those of gross misconduct. *See under Misconduct and Incompetency.*

(a) *See* post, page 371.

Where a sentence of imprisonment is inflicted, the provisions of section 18/55 should be strictly adhered to. (*See* also as to *Imprisonment*, post page 366.)

Wrecks and Casualties.

There are two things which should always be made the subject of the fullest possible inquiry :—

The cause or causes of the casualty.

The conduct of the officers and crew.

And in every notice of a Naval Court issued to masters or to others, it will be well to mention both subjects of investigation.

Where the facts are clearly ascertained, and where the officers and crew are clearly free from blame, and where no public benefit can be derived from a Formal Investigation, a Naval Court should not be held ; but every other case of a wreck, abandonment, or important casualty to a British ship outside British jurisdiction should, if possible, be investigated by a Naval Court.

No power is given for the appointment of an engineer or surveyor as a member of a Naval Court ; but where the Court needs advice relating to machinery, shipbuilding, local navigation, or any other point involved in the case, it can call experts as witnesses and examine them on the evidence given, which can be read over to them for the purpose.

Where there is reason to believe that the ship was unseaworthy, a most careful inquiry and report should be made as to the character of the unseaworthiness and its cause, and the time when it began. Any defect in a ship, its machinery, stowage, equipment or crew, which has caused the danger, is a proper subject for inquiry, no less than rottenness or overloading.

Whenever the unseaworthiness appears to have been due to the culpable neglect of the master, it can be considered by the Court when exercising their power of dealing with his certificate, and when due to the culpable neglect of the owners, the Court should consider whether the case is grave enough and the evidence strong enough for a special recommendation to the Board of Trade for their prosecution. In such a case the Court and Consul will do what they can to aid the prosecution by sending home the necessary witnesses.

Misconduct or Incompetency of Officers.

Whenever the misconduct or incompetency shown by an officer is connected with a casualty to a ship, it will be best dealt with by an Inquiry into the casualty. (*See Wrecks and Casualties.*)

When, however, it is not so connected, and it is otherwise made to appear that an officer has been guilty of any misconduct cog-

nisable by a Naval Court, such misconduct should be made the subject of investigation by itself.

The Court should in such cases bear in mind that it may have it in its power to exercise a double authority, viz., to deal with the certificate of the offender or to punish him with fine, &c., and should clearly understand that its judgment cannot be supplemented by further proceedings. Thus, if a mate be found guilty of an offence against discipline, and the Court fine him and discharge him from his ship, and do not deal with his certificate, there is no power which can deprive him of his certificate for the same offence.

Loss or or Danger to Health or Life.

By accident.—If unattended by a casualty to a ship, suspicious circumstances, or clearly not due to neglect or carelessness on the part of others, a Naval Court need not be held.

If attended by a casualty to the ship, it should be inquired into at the same time as the casualty. *See Wrecks and Casualties.*

If apparently due to neglect or carelessness, and still more so if attended with suspicious circumstances, it should be most carefully investigated, if the grounds for suspecting any particular person are sufficiently strong. *See Crimes committed on High Seas and Abroad.*

By improper or insufficient water accommodation, medicines, or anti-scorbutics.—In any grave case of this nature where several of a crew have died or are suffering severely from scurvy or other sickness due to these causes, a Naval Court should be held, the ship and stores surveyed, and evidence carefully taken as to how far the provisions of the law relating to provisions, health, and accommodation on board ships have been complied with. Secs. 221, 2, 3, 5, 8, 9, 30, and 4, 5, 7, 8, 9,
54. 67.

A Medical Officer of the Royal Navy shall, when possible, be a member of the Court, and, when necessary, medical men may be examined as experts.

The Report of the Court should state clearly the opinion to which it has arrived as to the cause of the loss or danger, and the parties, if any, who are in fault, and should give a distinct judgment on the following points when they apply:—

The provisions of the law which have not been complied with;

The discharge of the seamen;

The payment of wages, with the fines or compensation to the seamen, as the case may be;

The liability of owners or seamen to pay expenses of illness;

The payment of the expenses of the Court.

By defective equipment, &c.—In these cases the Court has no

power to do more than make inquiry, unless there has been default on the part of the Master or officers.

Danger or Damage to Property to Ships or Cargoes.

When unattended with *danger to life or health* or the *misconduct* of officers (see previous instructions), these cases will rarely require the holding of a Naval Court, except at the express request of those interested in the property, and should only be held in exceptional cases, when they can answer a useful purpose not otherwise to be accomplished, such as the exposure of a fraud or elucidation of facts important to the public.

In all cases where a Naval Court is thus held purely in the interests of owners of property, the Court should carefully exercise their powers relating to the payment of costs. *See Expenses of Naval Courts.*

THE LAW.

The law giving power to Naval Courts is comprised in the following sections of the Merchant Shipping Acts:—

(1.) Act of 1854. (17 & 18 Vict., c. 104.) Sections 260 to 266 inclusive.
(2.) Act of 1855. (18 & 19 Vict., c. 91.) Section 18.
(3.) Act of 1862. (25 & 26 Vict, c. 63.) Sections 23 and 24.
(4.) Act of 1869 (Colonial). (32 Vict., c. 11.) Section 8.
(5.) Act of 1871. (34 & 35 Vict., c. 110.) Section 8.
(6.) Act of 1873. (36 & 37 Vict., c. 85.) Section 16.

But these powers comprise the application of other sections of the same and other Acts, as follows, which should be referred to:—

The Act of 1854.

Section 263. (1.) *Power to supersede a Master.*—Refer to sections 46, 149, and 259 of the same Act, and section 4 of 1872, which require alterations in the Certificate of Registry and Agreement, a report to be made to the Registrar-General of Seamen, and certain documents to be handed to successors.

Section 263. (2, 3, 4.) *Power to discharge Seamen and to settle Wages, Fines, and Forfeitures.*—Refer to sections 181 to 187, legal rights to wages; 205 to 213, leaving seamen abroad; 243, 244, 245, 247, 249, 250, 251, 252, 253, 254, and section 8/67, discipline, fines, and forfeitures.

Section 263. (6.) *Powers of Consular Officer.*—Refer to section 268, crimes committed on the high seas and abroad.

The Act of 1855, s. 18.

Power, when summoned to hear any complaint touching the conduct of the Master or any of the crew, to try them for any offences against the Merchant Shipping Act, 1854, in respect of which two justices would, if the case were tried in the United Kingdom, have power to convict summarily, and by Order duly made, to inflict the same punishments for such offences which two justices might in the case aforesaid inflict upon summary conviction.—Refer to section 518/54, which enables two justices to try summarily offences declared by the Act to be a misdemeanour; sections 206, 207, 208, and 239, which make forcing on shore, leaving seamen behind illegally, and misconduct endangering ship or life or limb misdemeanours; section 243/54, offences of seamen; 245, distressed seamen; 7/67, Masters' liability for expenses of seamen's illness caused by their neglect; section 16/73, duties of Masters in case of collision; and to the Appendix, where a full list will be found of offences cognisable under this section.

See also Offences against Discipline, &c., and *Misdemeanours.*

The Act (Colonial) of 1869.

Power to deal with certain Colonial Certificates.—Certificates of Competency of the same validity as Imperial Certificates have been granted by the following colonies, viz. :—

Victoria.
New South Wales.
South Australia.
Tasmania.
Queensland.
New Zealand.
Bengal.
Bombay.
Dominion of Canada.
Newfoundland.
Malta and its Dependencies.

If charges are brought against officers holding Colonial Certificates, the Court should be careful to refer to this list and to the Order in Council given at page 394, as a Naval Court has no power under Imperial Law to deal with any Colonial Certificates except those granted under Orders in Council issued under the Imperial Act (Colonial) of 1869.

The Act of 1871.

Section 8. *Power to direct a Survey of a Ship.*—Refer to section 7 of the same Act, as to manner of survey, and sections 14 and 15 of the Act of 1854 as to powers of Inspectors.

The Act of 1873.

Section 16. *See* the Act of 1855.

* * * * * *

All the above Acts must be read and construed in connection with the Act of 1854, *of which they are made part, and it must be remembered that the terms used in these Acts bear the special meaning given to them by the interpretation clause* 2 *of the Act of* 1854.

CONSTITUTION OF COURT.

The Court is to be called by an officer in command of a ship of Her Majesty on a Foreign station, or in his absence by a Consular Officer.

It is to consist of not more than five and not less than three members.

No person can form one of a Naval Court who is not either an officer in the Naval Service of Her Majesty, a Consular Officer (a), the master of a British merchant ship, or a British merchant.

Except it be impossible to procure their attendance, a Naval Court is not legally constituted unless one of the Court is an officer in the Naval Service of Her Majesty not below the rank of lieutenant, one a Consular Officer, and one a master of a British merchant ship.

More than one Consular Officer cannot sit on a Naval Court.

When there is no Naval Officer one of the Court must be a master of a British merchant ship, when possible.

But where it is impossible to obtain the services of either a Naval Officer or a master of a British merchant ship, a Court composed of one Consular Officer and two or more British merchants is legally constituted, and then only.

Neither the master nor the consignee of the ship to which the parties complaining or complained against may belong can be a member of a Naval Court.

The President of the Court must be either a Naval or a Consular Officer, and if there is both a Naval and a Consular Officer in such Court then the President of the Court must be the Naval or Consular Officer who is of the highest rank, according to Regulation, whether he has summoned the Court or not.

A Medical Officer in the Royal Navy may be a member of a Naval Court.

(a) For definition of Consular Officer, see interpretation clause section 2 of Merchant Shipping Act, 1854.

PROCEDURE.

A copy of the report or statement of the case upon which the Investigation is ordered should be furnished, before the commencement of the Investigation, to the master and any of the crew holding certificates.

Unless this is done the Court cannot cancel or suspend such certificates.

Every person against whom a charge is made should be informed in writing of the precise nature of the charge and of the time and place at which the Court is to sit; he should also be allowed to be present when the evidence is taken, to cross-examine and to bring any evidence and make a statement in defence.

The parties and all necessary witnesses should be summoned by the Court, and their attendance may be compelled, and the production of all necessary documents may be ordered.

Unless there be any special reason to the contrary, the Court should be open to the public.

All evidence should be, whenever practicable, taken on oath.

Every person connected with the ship in connection with which the Court is held who possess a certificate, or more than one, as officer in the Merchant Service, whether granted in the United Kingdom or a Colony, should be required to deliver it, or them, up into the custody of the Court before the commencement of the Inquiry (e).

As to steps to be taken when a master is superseded in command, *see* the *Act of* 1854.

The decision of the Court with regard to cancelling or suspending certificates should be stated in open Court, at the conclusion of the case, or as soon afterwards as possible.

The same course should be taken with regard to the Court's decisions and sentences on other points.

When the proceedings are concluded, a report must be made to the Board of Trade, containing the following particulars, that is to say,—

(*a.*) A statement or copy of the complaint or other matter which may have caused the summoning of the Court:

(*b.*) The steps taken thereupon by the officer, Naval or Consular:

(*c.*) a copy of the notice given to any person against whom any charge is made:

(*d.*) The names and descriptions of the persons composing the Court:

(*e.*) The depositions and other evidence taken before the Court, signed when practicable by the witnesses:

(e) This instruction has now been rendered inoperative. *See* 42 & 43 Vict., c. 72, s. 3, sub-sec. 4, *ante* page 65.

(*f.*) The Order made by the Court:

(*g.*) If any seaman or apprentice is discharged, an account of his wages:

(*h.*) When a ship has been wrecked, lost, or abandoned, a narrative of the material facts which the Court considered proved, with any necessary references to or extracts from the evidence, the opinion of the Court as to the precise cause or causes of the casualty, a negation of any suggestion as to the cause of loss not supported by the evidence, the opinion of the Court as to whether any person has been guilty of any negligence or default, and whether such negligence or default occasioned or contributed to the loss of the ship, and, finally, a statement of any special precautions which the case shows should be taken in future, together with any remarks on the conduct of the master and crew, or other circumstances connected with the case which the Court may think fit to make.

The report must be signed by the President of the Court, with his official title, and if he be a Consul, his Consular seal should be attached. The depositions and all the documents contained or referred to in it must be originals and not copies, unless they are documents which it is absolutely necessary to keep for some other purpose; in which case the copies must be certified by the President to be correct. The utmost attention should be paid in observing these formalities, as without them the proceedings of the Court may be rendered nugatory. The report must be then sent home by the first opportunity to the Board of Trade, with a covering letter from the President or the Consul.

When a certificate has been cancelled or suspended by order of a Naval Court, it should be forwarded to the Board of Trade with the report of the Court, if it has been granted in the United Kingdom, but if in a Colony, to the Governor or Administrator of the Colony in which it was granted.

The only exception to this rule is when delay is likely to occur before the certificate is returned beyond the date to which the certificate is suspended.

For instance, if a Certificate is suspended for three months by a Naval Court held at Batavia, and the master's residence is at Singapore, the Court should send the certificate to the Governor of the Straits Settlement, to be returned on the expiration of the sentence. In such cases the report sent to the Board of Trade should carefully explain how the certificate has been disposed of.

As to the Colonial Certificates over which a Naval Court has power to deal, *see* the *Merchant Shipping* (*Colonial*) *Act*, 1869, section 8.

In all cases where gross misconduct or incompetency is shown, it will be better not to suspend the certificate for a certain term but to cancel it, with a recommendation to the Board of Trade to return it at a stated time on being satisfied, by certificates of good conduct or by examination, that the officer is again fit to be in possession of it.

As it is not advisable, as a rule, that officers should be entirely precluded from following their calling, the Court when cancelling or suspending a certificate should take into consideration whether the officers may fairly be intrusted with a certificate of a lower grade than that which has been cancelled or suspended, and make a recommendation accordingly that a certificate for such a grade should be issued to him.

Every certificate over which the Court has no power of cancellation or suspension, or which the Court does not think fit to suspend or cancel, should be returned to the holder at the close of the Inquiry(a).

All orders of a Naval Court should be entered in the log-book of the ship in connection with which the Court has been held, and should be signed by the President of the Court.

All orders of the Court should be framed with great care, fully and distinctly, and in the strictest accordance with the provisions of the Merchant Shipping Acts, so that their authority may not be questioned in any particular when produced at any subsequent legal proceedings.

For instance, whenever the whole or any part of the wages of a seaman are to be forfeited or any compensation awarded to him, the forfeiture or award must be expressed in distinct terms, and the section of the Act under which the order is made should be quoted.

The Court should point out to anyone who wilfully and without due cause prevents and obstructs the summoning or the conduct of any case or Investigation by any Naval Court that he thereby incurs a penalty of £50, or imprisonment with hard labour for 12 weeks, and will report the names and addresses of any person doing so, and will, if necessary, make use of any assistance that local authorities may be willing to render to prevent such obstructions, but the Court has no power to enforce the penalty under the Act.

When the Court exercises its power of imprisonment (*see* the *Act of* 1855), which on shore in a Foreign country can of course only be exercised so far as the laws and regulations of

(a) This instruction has now been rendered inoperative. *See* 42 & 43 Vict., c. 72, s. 3, sub-sec. 4, *ante* page 65.

Foreign countries permit, it should be ascertained that the place of confinement is fit and proper, and the mode of treatment is humane.

EXPENSES OF NAVAL COURTS.

No expenses should be incurred which are not necessary for the investigation of the case before the Court.

No allowance can be authorised to witnesses except in cases of great hardship or where experts are called to assist the Court by their evidence. (*See under Wrecks and Casualties.*)

When a crew has been detained a long time at considerable loss, the Court may make them an allowance not exceeding the rate of pay they were last receiving, provided that they have not been in receipt of wages during that time and have been detained solely for the purposes of the Court and have no interest in the Investigation.

The only other allowances are as follows:—

For British Shipmasters or Merchants on the Court, £2 2s. a day.

For expert witnesses, £1 1s. or £2 2s. a day, according as the Court may think right.

For the Clerk of the Court, £2, if the Court sit but one day; if more than one day, then for each day (including the first) £1 10s. This allowance is to include copying expenses and all clerical work necessary before and after the Court sits.

For a petty officer of the Royal Navy, for acting as Provost Marshal, 5s. a day.

Interpreters, Surveyors, Medical Men, and Translators, when not holding appointments under Her Majesty's Government, the charges customary at the port. No charges should be made for the serving of summonses except money actually paid out of pocket for boat hire and other necessary expenses incurred in serving them.

All expenses should be entered in the report of the Court as part of the costs, and no expenses will be allowed unless so entered.

The Court has power to order the costs of the proceedings or any portion of them to be paid by any of the parties thereto, and any such order must be formally and carefully made to be of validity in any future proceedings.

The Board of Trade are advised that parties to the proceedings include only parties on whose complaint the Court has been held or who have been complained against, or persons on whose application the Court has been held.

In a case of simple Investigation into a wreck or casualty, therefore, no such order can be made on the master or owner of the ship unless the Court has been held at their express request, nor can it be fairly made in such a case unless the Investigation is proved to be useless, or to have been applied for and held for the benefit of the ship only.

When the Court is held at or near a port where there is a British Consul, the Consul will pay the expenses of the Court, unless otherwise ordered, and will charge them in his account with the Board of Trade. When there is no British Consul at hand the expenses will be paid by the paymaster of the ship of war, under the authority of the Senior Naval Officer.

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LIST OF OFFENCES

AGAINST THE MERCHANT SHIPPING ACTS, IN RESPECT OF WHICH TWO JUSTICES WOULD, IF THE CASE WERE TRIED IN THE UNITED KINGDOM, HAVE POWER TO CONVICT SUMMARILY, WITH THEIR PENALTIES AND PUNISHMENTS.

	Section (a)
Naval Officers, Consuls, and Board of Trade Inspectors:	
Refusing to produce ship's papers, or to allow muster of crew by Naval or Consular Officers, &c. (£20) ...	13
Refusing to attend as witness when summoned by Board of Trade inspector (£10)	15
Witness refusing to answer or do what is required (£10)	15
Wilfully impeding inspector in his duties (£10) ...	15
British Ships:	
Allowing goods to be carried in engine space (£100)	23 (5)
Omitting to mark ship as directed with name, port of registry, official number, and draft of water, or concealing, removing, or altering, &c., such marks (£100) ...	3/73
Breaking rules as to naming of ships	6/71
Breaking rules on Foreign ships becoming British (£100)	5/73

(a) Where no date is given the Act referred to is the Merchant Shipping Act, 1854. In other cases the date of the Act is given, thus: 3/73 denotes the third section of the Merchant Shipping Act of 1873. The figures in brackets thus (5) denote the sub-section.

	Section
Master neglecting to deliver up Provisional Certificate of Registry (£50)	49
Master refusing, on request, to deliver up Certificate of Registry (£100)	50
Using Certificates of Registry not legally granted (misdemeanour)	52
Neglecting to deliver up Certificate of Registry on ship being lost, or ceasing to be British (£100) ...	53
Obtaining certificate of sale, or exercising power of sale when ship sold to unqualified person (£100) ...	81
Concealment of British and assumption of Foreign character (misdemeanour)	103 (2)
Making false declaration of qualification for ownership (misdemeanour)	103 (4)
Masters, first, second, or only mates in Foreign-going ships, or masters and first or only mates in home-trade passenger ships, going to sea without certificates (£50)	136
Employing such masters and mates without certificates (£50)	136
False representation to obtain certificates (misdemeanour)	140
Forging or fraudulently altering certificate or official copies (misdemeanour)	140
Using forged, altered, cancelled, or suspended certificate (misdemeanour)	140
Lending certificate (misdemeanour)	140
Engineers proceeding to sea in steamships in Foreign and home trade without necessary certificates (£50) ...	5/63
Employing engineers without necessary certificates (£50)	5/63
Not transmitting indentures of apprenticeship within seven days after execution to Registrar-General of Seamen or shipping master (£10)	143
Not notifying within seven days assignment or cancellation of indenture, or death or desertion of apprentice, to Registrar-General or shipping master (£10) ...	143
Not taking apprentices and their indentures before Superintendent in United Kingdom before voyage in Foreign-going ship (£5)	145
Not entering name of apprentice, &c., on agreement (£5)	145

Engagement:

Employing unlicensed persons to engage seamen (£20 per man)	147
Receiving seamen illegally supplied (£20 per man) ...	147

Section

Receiving remuneration from seaman for finding him employment (£5) 148

Making false statement on a running agreement (£20) 152

Shipping seamen without duly accepted agreement (£5) 157

Not reporting change in crew in Foreign-going ship after engagements before leaving United Kingdom (£5) 158

Shipping seamen in Foreign port otherwise than through Consul (£20) 160

Master of Foreign-going ship failing to deliver agreement to shipping master within 48 hours after arrival (£5) 161

Master or owner of home trade ship failing to deliver to shipping master half-yearly agreements (£5) ... 162

Fraudulently altering or making false entry, or delivering false copy of agreement (misdemeanour) ... 164

Master failing to post up copy of agreement in accessible part of ship (£5) 166

Discharge:

Master or owner of Foreign-going ship discharging seamen otherwise than before a shipping master (£10) 170

Master failing to deliver before discharging seamen account of wages (£5) 171

Master failing to give to any seaman a certificate of discharge (£10) 172

Master failing to return mate's certificate on discharge (£20) 172

Owner, master, &c., failing to appear before shipping master, or to produce log, &c., or any proceedings as to wages, claims, or discharge (£5) 174

Making false certificate or report of character on discharge of seamen (misdemeanour) 176

Forging or fraudulently altering such certificate of character (misdemeanour)... 176

Fraudently using forged or altered certificate of character (misdemeanour)... 176

Wages, &c.:

Master failing to take charge of wages and effects of deceased seamen (treble the value, or £50) 196

Master failing to make attested entries thereof in official log (treble the value, or £50) 196

Master failing to deliver up such wages and effects to Consular Officer (treble the value, or £50) ... 196

Section

Forging, or altering, or making use of forged or altered document to prove a right to such wages and effects (misdemeanour) 203

False evidence or representation to obtain such wages and effects (misdemeanour) 203

Leaving Abroad:

Forcing on shore and leaving behind seamen before completion of voyage (misdemeanour) 206

Master discharging seamen abroad without certificate of some functionary or two merchants (misdemeanour) 207

Master leaving seamen abroad for inability, failing to deliver to functionary account of wages, and to pay wages (£10 and wages) 209

Master delivering a false account of wages (£20 and wages) 209

Master failing to give passage home to seamen shipwrecked or left abroad in distress (£100). ... 212

Volunteering into Navy:

Stipulating in agreement that seamen shall incur forfeiture or loss if they volunteer into the Navy (£20) 214

Master failing to give up clothes and effects, and to pay wages of seamen volunteering into Navy (£20 and wages) 215

Provisions, Health, &c.:

Not providing provisions and water fit for use, and of sufficient quantity (£20) 221

Master not having the regulation medicines, *Medical Guide*, and anti-scorbutics on board (£20) 4/67

Master not serving out anti-scorbutics (£5) ... 4/67

Master not entering in log refusal by any seaman to take anti-scorbutics (£5) 4/67

Master not keeping on board weights and measures (£10) 225

Master going to sea without medical inspector's certificate as to medicine, anti-scorbutics, &c., after due notice of insufficiency of supply on board (£20) ... 226

Master failing to keep crew space free from goods (one shilling for each day)... ... ... 9/67

Master not allowing seamen to go ashore to make complaint (£10) 232

Breach of Discipline:

Misconduct or drunkenness endangering ship, life, or limb (misdemeanour) 239

Section

Refusing to do any lawful act to preserve life or limb (misdemeanour) 239

Master, mate, or engineer failing to deliver up certificate cancelled or suspended to Court which heard the case (£50) 24/62

Desertion (imprisonment and forfeiture of effects and wages) 243

Neglecting to proceed to sea, or absence without leave (imprisonment and forfeiture of pay) 243

Quitting ship without leave before ship properly secured (forfeiture of wages) 243

Wilful disobedience (imprisonment and forfeiture of wages) 243

Continued disobedience (imprisonment and forfeiture of wages) 243

Assault on officers (imprisonment) 243

Combination to disobey (imprisonment) 243

Wilful damage to ship, stores or cargo (imprisonment) 243

Embezzling stores or cargo (imprisonment) ... 243

Smuggling, causing loss to owner (reimbursement of loss and forfeiture of wages) 246

Apprehending deserters on insufficient grounds (£20) 246

False statement by seaman as to name of last ship, or his own name (£5) 255

Master or owner refusing to pay seamen's fines (six times the fine) 256

Enticing to desert (£10), and harbouring deserters (£20) 257

Master, when superseded, failing to hand over ship's documents (£100) 259

Naval Courts:

Obstructing a complaint or conduct of case, Naval Court (£50 or imprisonment) 266

Master refusing to carry home offenders on high seas and witnesses (£50) 268

Master failing to give offender on high seas into charge of police-officer (£50) 268

Registrations and Returns:

Master failing to send to shipping master at port of registry ship's lists on loss or transfer of ship (£10) 276

Master arriving at Foreign port failing to deliver agreements and indentures to Consul (£20) 279

Master arriving at colonial port failing to deliver agreements and indentures to Customs officer (£20) ... 279

Official Logs:

Section

Master not keeping log as directed, and not making entries in due time (£5) 284 (1)

Entering of occurrences previous to arrival more than 24 hours after arrival (£30) 284 (2)

Wilful destruction or mutilation of or rendering entry illegible in official log (misdemeanour)... ... 284 (3)

Wilfully making fradulent entry, or omitting to make entry, in official log (misdemeanour) 284 (3)

Master failing to send official log to shipping master at port of registry on transfer or loss of ship (£10) 287

Safety and Prevention of Accidents:

Master for not recording draught of water on going to sea in official log (£20) 5/71

For sending unseaworthy ships to sea (misdemeanour) 4/76

Proceeding to sea without proper boats and life-buoys (master £50) 293

Losing or rendering boats and life-buoys unfit for service through wilful negligence (master £50) 293

Wilful neglect to replace or repair boats and life-buoys (master £50) 293

Not keeping boats and life-buoys constantly fit for use (master £50) 293

Rules for Preventing Collisions at Sea:

For infringement of rules (misdemeanour)... ... 27/62

Master neglecting to stay by other vessel after collision, and refusing to give name of vessel, and name of port of registry and port of destination (misdemeanour) 16/73

Build and Equipment of Steamships:

Breaking rules as to construction of safety-valve (master £50) 301

Not having compasses properly adjusted (master £50) 301

Not having fire hose on board steamships (master £50) 301

Placing undue weight on safety-valve (£100) ... 302

Accidents:

Owner or master of steamship not reporting accidents to the Board of Trade within 24 hours (£50) ... 326

Master failing to enter in official log any collision immediately after occurrence (£20) 328

NAVAL COURTS BETWEEN THE 1st AUGUST, 1875, AND THE 31st JULY, 1879, WHICH IN CONSEQUENCE OF IGNORANCE OF THE LAW HAVE EITHER BEEN WRONGLY CONSTITUTED, HAVE PRONOUNCED ILLEGAL SENTENCES, OR HAVE FAILED TO EXERCISE THEIR POWERS.

When held.	Cause of Inquiry.	Nature of Irregularity.
7th Aug., 1875 ...	Charge against Fireman of mutinous conduct and assault on Chief Officer.	Accused sentenced to be conveyed in irons to Jamaica, and there imprisoned for three months.
18th Aug., 1875 ...	Refusal of duty and use of abusive language by a Seaman.	Accused sentenced to be conveyed in irons to Jamaica, and there imprisoned for sixteen weeks.
9th Sept., 1875 ...	Mate and several of crew charged with drunkenness and mutiny.	Board of Trade recommended to cancel or suspend Mate's certificate.
21st Dec., 1875 ...	Stranding of vessel...	Owners, though not parties to proceedings, ordered to pay costs.
23rd Feb., 1876 ...	Loss of vessel	Master in default; recommended to clemency of Board of Trade.
1st Mar., 1876 ...	Illegal discharge of several of crew, and false log-book entries by Master.	Infliction of all or part of fines incurred left to judgment of Board of Trade.
4th July, 1876 ...	Charges of ill-treatment made by crew against Master and Mate.	Amount and proportions of compensation decreed to be paid by Master and Mate to complainants left to decision of Board of Trade.
31st July, 1876 ...	Stranding of vessel	Copy of Statement on which Inquiry was ordered, not furnished to Master.
2nd Aug., 1876 ...	Murderous assault by three Seamen on Master.	Accused sentenced to be sent to Hong Kong for imprisonment there, one for three months, and the others for six months each.

When held.	Cause of Inquiry.	Nature of Irregularity.
11th Aug., 1876 ...	Drunkenness and misconduct of three Seamen.	Accused sentenced to indefinite terms of imprisonment.
19th Aug., 1876 ...	Loss of vessel	A German Acting-Consul and a Russian Shipmaster acted as Members of Court.
29th Aug., 1876 ...	Loss of vessel	(1.) A German Acting-Consul acted as Member of Court. (2.) Master (in default) recommended to clemency of Board of Trade.
2nd Sept., 1876 ...	Mate charged with theft and drunkenness	Mate's certificate sent to Board of Trade for their decision.
25th Nov., 1876 ...	Assault on Master by Boatswain	Accused sentenced to 12 *months'* imprisonment—legal punishment being only twelve *weeks'* imprisonment.
11th January, 1877	Drunkenness of Master	Certificate suspended during pleasure of Board of Trade.
3rd March, 1877 ...	1. Master proceeding to sea from a colonial port without a Certificate.	1. Court had no jurisdiction.
	2. Breach of S. 286 of Merchant Shipping Act, 1854.	2. Section inapplicable to Master's offence.
	3. Illegal use of improper Certificate of Registry; S. 52, Merchant Shipping Act, 1854.	3. Court exceeded its jurisdiction in sending case for trial in a colony.
2nd April, 1877 ...	Stranding of vessel...	Suspension of Certificate of Master left to decision of Board of Trade.
5th April, 1877 ...	Loss of vessel	Certificate of Master suspended for an indefinite period, to be dealt with at discretion of Board of Trade.
14th April, 1877 ...	Misconduct of a Seaman	Accused sent to England to undergo 24 weeks' imprisonment.
16th April, 1877 ...	Loss of vessel	Interpreter to Consulate (not a British merchant) a Member of Court.

When held.	Cause of Inquiry.	Nature of Irregularity.
28th May, 1877 ...	Loss of vessel	Master's Certificate sent to Board of Trade for their decision.
17th July, 1877 ...	Stranding of vessel	(1.) Two Consular Officers sat on Court. (2.) Apportionment of costs left to discretion of Board of Trade.
19th July, 1877 ...	Murderous assault on Master by a Seaman.	Accused sentenced to 12 weeks' imprisonment in an English prison.
6th August, 1877 ...	Disobedience of a Seaman, and his confinement in irons by Master.	On Master refusing to pay costs, Court suspended his Certificate until he paid them.
3rd October, 1877 ...	Mutiny on board	Entire ship's company sent home for trial without distinct charge being preferred.
25th October, 1877	Master's ill-treatment of cook, resulting in death of latter.	Master sentenced to a term of imprisonment instead of case being sent home for trial.
4th December, 1877	Loss of vessel	Part of costs charged to owners, who were not parties to proceedings.
6th March, 1878 ...	Do.	Costs charged to Board of Trade to be recovered from owners.
25th April, 1878 ...	Do.	Court suspended a Certificate over which they had no jurisdiction.
3rd May, 1878 ...	Stranding of vessel...	Certificate of Master suspended, though vessel sustained no material damage.
27th May, 1878 ...	Assault by stoker on two of crew ...	Court exceeded its powers in fining the accused.
3rd December, 1878	Misconduct of Master	Certificate sent to Board of Trade for their decision.
6th January, 1879	Loss of vessel	Master mulcted in costs, though not a party to proceedings.
13th March, 1879 ...	Do.	Acting Assistant to Consulate acted as Member of Court.
19th May, 1879 ...	Do.	Master and Mate mulcted in costs, though not parties to proceedings.

SUPPLEMENTARY INSTRUCTIONS TO NAVAL COURTS.

Board of Trade, *July*, 1882.

Addition to paragraphs relating to "Offences against Discipline" and "Misdemeanours and other offences against the Merchant Shipping Acts" (pages 5 *and* 6 *of the Instructions) and "The Act of* 1855, *sec.* 18" (*page* 10).

As questions have arisen how far the additional powers conferred upon Naval Courts by the 18th section of the Merchant Shipping Act, 1855, are alternative or cumulative in respect to the powers previously given to them by the 263rd section of the Merchant Shipping Act of 1854, it is desirable to explain that Naval Courts when they punish by inflicting imprisonment or forfeiture of wages, or both, under the 243rd section of the Act of 1854, should not also punish by inflicting forfeitures of wages under the 263rd section of the same Act.

T. H. FARRER, *Secretary*.

THOMAS GRAY, *Assistant-Secretary*.

QUALIFICATION OF BRITISH MASTERS, MATES, AND ENGINEERS.

—o—

Classes of Certificates.

THE Certificates (a) held by British masters, mates, and engineers may be either :—

(a) Examinations for grades in the Merchant Service first became the subject of statutory regulation under the provisions of the Mercantile Marine Act, 1850, which were amended by those of the Act of 1854 hereafter referred to.

Before the passing of the former Act the examinations were voluntary. It appears from the evidence given before the Select Committee of 1836, that they were resorted to according to the usage and requirements of certain employers; for example, the officers and commanders of the East India Company, and other public companies, and large houses of business owning ships were uniformly examined. (Report and evidence of Select Committee of 1836, pp. 47 and 48.) At or about the same date Marine Boards (so-called) were established at some of the larger outports by persons carrying on particular trades, and by insurance clubs; and it was the duty of such Boards to examine the officers commanding ships insured in the local clubs.

To the successful applicants certificates were issued to the effect that the holder had passed an examination before the Marine Board, had been found competent in practical seamanship, and other specified subjects, and was qualified to command a vessel in certain specified trades.

The voluntary system of that date will be illustrated by the following description, furnished by Mr. John Gillie, the Secretary of the existing Local Marine Board at South Shields, of the practice at that port in the year 1839.

There were three classes of officers to whom certificates were issued.

The first grade consisted of persons who were examined in practical seamanship and coasting, and the certificates qualified the holders for the command of coasting vessels only.

The qualifications for the second grade included a knowledge of seamanship and coasting, the use of sea charts, plane trigonometry, navigation and nautical astronomy, so far as was necessary for ascertaining the latitude by the sun and stars, and the longitude by dead reckoning and by chronometer. Persons who passed exam.

Competency.

1. Certificates of Competency ([a]).

Service.

2. Certificates of Service ([b]).

Colonial Certificates of Competency.

3. Colonial Certificates of Competency, *i.e.*, Certificates of Competency granted by the Legislature of any British Possession, under the provisions of the Merchant Shipping (Colonial) Act, 1869, hereinafter explained ([c]).

The above are subject to the jurisdiction of the several Courts of Inquiry, described in this book ([d]).

Colonial Certificates of Service.

4. Colonial Certificates of Service ([e]).

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inations for this grade were qualified to command ships in the Baltic, North America, and Mediterranean trades.

The examination for the third grade involved a more extensive knowledge of navigation and nautical astronomy, including lunar observations; and persons who passed this examination were deemed qualified to take command of ships sailing to any part of the world.

In 1845 a more formal system, though still voluntary, came into operation under the direct sanction and regulation of the Board of Trade.

It was established under a notice published in the *London Gazette* of 19th August, 1845, bearing the signature of Mr. J. G. Shaw-Lefevre, Assistant-Secretary to the Board of Trade:

The Boards of Examiners were to be the Corporation of the Trinity House in London, the Corporations of the Trinity House at Hull, Newcastle, and Leith, the Sub-Commissioners of Pilotage at certain other Ports, the Board for Licensing Pilots at Glasgow, the Ballast Board of Dublin, and the Commissioners of Pilotage at Liverpool. Other ports were to be added to the list when possessed of a competent examining authority. The notice set forth the regulations made by the Board of Trade for the conduct of examinations, and the certificates purported to be Certificates of Competency granted upon an examination at the request of the holder.

The following regulation was made respecting the withdrawal of certificates so granted:—

"In case any vessel, the master or mate of which has a certificate, shall be lost, burnt, stranded, or otherwise damaged, or in case any master or mate having a certificate, shall be charged with having been drunk at sea, or with having been drunk on board at different times in harbour, the Board of Examiners nearest the port to which the vessel belongs, or nearest to the place on the coast of the United Kingdom where the vessel to which such master or mate belongs, shall arrive, or nearest to where they may be when the

([a]) *See* post, page 386. ([b]) *See* post, page 388.
([c]) *See* post, page 390. ([d]) *See* page 87.
([e]) *See* post, page 393.

These are not subject to the jurisdiction of the Courts of Inquiry above-mentioned (see post, page 393).

To explain in detail the machinery prescribed by the Legislature for the examination and qualification of British masters and mates would be foreign to the purpose of the present work, but the following brief statement of the law may be made.

With regard to certain classes of ships sailing from ports in the United Kingdom, it is compulsory that they shall be officered by duly qualified masters and mates ([a]) and as to such of them as are steamships also by certificated engineers. Those ships are foreign-going ships, and home trade passenger ships. Trawlers of 25 tons register tonnage and upwards will after the 1st January, 1884, be required to carry a duly qualified skipper ([b]).

Foreign-going ships.

A Foreign-going ship is defined to include every ship employed in trading or going between some place or places in the United Kingdom, and some place or places situate beyond the limits defined for home trade passenger ships ([c]) :

Home trade passenger ships.

A home trade passenger ship is a home trade ship employed in carrying passengers ([c]), a home trade ship itself being defined to include every ship employed in trading or going within the following

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complaint is brought forward, may, if it shall think fit, upon receiving any information or complaint of the event or occurrence, inquire into the same, and if it shall appear to the Board of Examiners undertaking such inquiry that such loss, burning, stranding, or damage, &c., of the vessel has been occasioned by the misconduct or default of such master or mate, or that such master or mate has been drunk whilst on duty, such Board of Examiners, may, if it shall think fit, withdraw the certificate of such master or mate, and declare that the same is withdrawn accordingly."

Such withdrawal was to be forthwith reported to the Board of Trade with a full statement of the circumstances, and power was given to any master or mate whose certificate had been withdrawn to refer the matter by way of appeal to the Board of Trade for their final decision.

The above system took effect on the 1st November, 1845, and remained in force until the passing of the Mercantile Marine Act, 1850. (*See* Introduction, page 6.) The holders of Certificates of Competency, granted in pursuance of that system, were among those to whom by section 27 of the above Act, the Board of Trade might grant Certificates of Competency in lieu of Certificates of Service. (*See* Introduction, page 7.)

([a]) 17 & 18 Vict., c. 104, s. 136.

([b]) 46 & 47 Vict., c. 41, s. 42. But this Act does not apply to Scotland. (Sec. 1.)

([c]) 17 & 18 Vict., c. 104, s. 2.

limits: that is to say, the United Kingdom, the Islands of Guernsey, Jersey, Sark, Alderney, and Man, and the Continent of Europe between the River Elbe and Brest inclusive ([a]).

No foreign-going ship to go to sea without qualified master and mates.

No foreign-going ship may go to sea from any port in the United Kingdom unless the master thereof, and the first and second mates, or only mate, as the case may be, have obtained and possess valid ([b]) Certificates either of Competency or Service appropriate to their several stations in such ship or of a higher grade ([c]), and it is compulsory that there shall be at least two officers qualified as a master and as only mate respectively on board every foreign-going ship of 100 tons burden or upwards, for no such ship shall go to sea as aforesaid unless at least one officer besides the master has obtained and possesses a valid Certificate appropriate to the grade of only mate therein or to a higher grade ([d]).

Similar provisions as to home trade passenger ships.

Similar provisions are laid down with respect to every home trade passenger ship, with the exception that if she carries a second mate he need not be certificated ([e]).

A penalty of £50 is incurred by every person who having been engaged to serve in either of the grades above-mentioned, goes to sea without being at the time entitled to and possessed of the prescribed certificate or who employs any such person without ascertaining that he is at the time entitled to and possessed of such certificate ([e]).

Higher efficiency required for foreign-going ships.

Provisions for that purpose.

A higher degree of efficiency is required for the officers of foreign-going ships than for those of home trade passenger ships, and accordingly it is provided that every Certificate of Competency for a foreign-going ship shall be deemed to be of a higher grade than the corresponding certificate for a home trade passenger ship, and shall entitle the lawful holder thereof to go to sea in the corresponding grade in such last-mentioned ship; but no certificate for a home trade passenger ship shall entitle the holder to go to sea as master or mate of a foreign-going ship ([f]).

Two grades of Engineers' Certificates.

Two grades of certificates are also granted by the Board of Trade for the qualification of engineers on board steamships, viz: First class engineers' certificates and second class engineers' certificates ([g]).

Engineers of foreign-going steamers of 100 horse-power and upwards.

With respect to such steamships as come under the designation of foreign-going ships, it is further provided that they shall also have a duly qualified engineer or engineers ([h]), that is to say—

1. If such ship be of 100 nominal horse-power or upwards it shall

([a]) 17 & 18 Vict., c. 104, s. 2.

([b]) See as to Colonial Certificates, post, page 390.

([c]) It frequently happens that a mate engages to serve in a particular grade while really qualified for a superior grade.

([d]) 17 & 18 Vict., c. 104, s. 136. ([e]) *Ibid.*

([f]) *Ibid.*, s. 137

([g]) 25 & 26 Vict., c. 63, s. 5. ([h]) *Ibid.*

have as its first and second engineers two certificated engineers, the first possessing a first class engineer's certificate, and the second possessing a second class engineer's certificate, or a certificate of the higher grade.

Of less than 100 horse-power.

2. If such ship be less than 100 nominal horse-power it shall have as its only or first engineer, an engineer possessing a second class engineer's certificate or a certificate of the higher grade.

Home trade passenger steamships.

With respect to such steamships as come under the designation of home trade passenger ships, it is further provided that every such ship shall have as its first or only engineer an engineer possessing a "second class engineers' certificate," or a certificate of the higher grade ([a]).

Penalties.

A penalty of £50 is incurred by persons engaged to serve as engineers, who are not duly qualified and by persons employing them, without ascertaining that they are so qualified ([b]).

Provisions as to Trawlers.

The enactments relating to trawlers are contained in a recent Act, 46 & 47 Vict., c. 41, called the Merchant Shipping (Fishing Boats) Act, 1883 ([c]), which provides that after the 1st day of January, 1884, no fishing boat shall go to sea from any port in the United Kingdom unless the skipper thereof is the holder of a Certificate of Competency or Service entitling him under the Act to act as skipper of such fishing boat ([d]).

Penalties.

If any fishing boat goes to sea contrary to the above provision, the owner thereof shall incur for each such offence a penalty not exceeding £20. Every person who, having been engaged to serve as skipper of a fishing boat, and not being the holder of a certificate entitling him under the Act to act as skipper of such boat, serves as such skipper (except in case of necessity) and every person who employs any person as a skipper of a fishing boat (except in case of necessity) without having ascertained that he is the holder of a certificate entitling him under the Act to act in such capacity as aforesaid, shall for each such offence incur a penalty not exceeding £20 ([e]).

Definition of fishing boat.

"Fishing boat" means a vessel for the time being employed in the sea fishing service for profit, but that portion of the first part of the Act which does not in any way relate to indentures of apprenticeship to the sea fishing service, or agreements with boys under 16 with respect to such service or to discipline, or the settlement of disputes between an owner and a seaman, or to deaths, injuries, punishments, illtreatment and casualties, or agreements with seamen to be paid by a share in the catch, shall apply to trawlers of 25 tons

([a]) 25 & 26 Vict., c. 63, s. 5. ([b]) *Ibid.*
([c]) This Act does not apply to Scotland.
([d]) 46 & 47 Vict., c. 41, s. 42. ([e]) *Ibid.*

register tonnage ([a]) and upwards only, and to no other fishing boats ([b]). The result is that the above provision requiring fishing boats to carry a duly qualified skipper applies only to trawlers of 25 tons register tonnage.

CERTIFICATES OF COMPETENCY.

Certificates of Competency granted in the United Kingdom.

Examinations for.

Under Rules of the Board of Trade and subject to their control.

For the purpose of qualifying persons as masters and mates, the Merchant Shipping Act, 1854, and the Merchant Shipping Act Amendment Act, 1862, contain provisions for the holding of examinations by examiners appointed by Local Marine Boards to be conducted under rules laid down by the Board of Trade, and to be strictly adhered to by all examiners. No examiner may be appointed unless he possesses a certificate of qualification to be from time to time granted or renewed by the Board of Trade, in whom are vested other full powers of control over the examiners and the performance of their functions, as well as over the arrangements for the examinations by Local Marine Boards ([c]).

The Board of Trade to grant Certificates of Competency on report of examiners.

If the examiners shall duly report that an applicant has passed the examination satisfactorily and has given satisfactory evidence of his sobriety, experience, ability, and general good conduct on board ship, the Board of Trade shall deliver to him a "Certificate of Competency" to the effect that he is competent to act as master, or as first, second, or only mate, of a foreign-going ship, or as master or mate of a home trade passenger ship, as the case may be ([d]). But in every case in which the Board of Trade has reason to believe the examination to have been unduly made, such Board may remit the case either to the same or to any other examiners, and may require a re-examination of the applicant, or a further enquiry into his testimonials and character before granting him a certificate ([e]).

Subject to powers of review by the Board of Trade.

Examinations for Engineers' Certificates of Competency.

With respect to engineers the Board of Trade shall from time to time cause examinations to be held by examiners appointed by the Board under rules to be laid down by them as to qualifications and all other matters in their discretion for the examination of persons who

([a]) The tonnage of an unregistered fishing boat is to be ascertained according to the methods sanctioned by the Merchant Shipping Acts, 1854 to 1883, and a certificate thereof, purporting to be given under the hand of a Board of Trade Surveyor, shall be conclusive of the tonnage of such boat, 46 & 47 Vict., c. 41, s. 3.

([b]) *Ibid.*

([c]) 17 & 18 Vict., c. 104, s. 132; 25 & 26 Vict., c. 63, s. 17. The Board of Trade have framed Instructions for the holding of these examination which may be obtained at any Mercantile Marine Office.

([d]) 17 & 18 Vict., c. 104, s. 134. ([e]) *Ibid.*

may be desirous of obtaining Certificates of Competency as engineers [a].

Engineers' Certificates of Competency.

The Board of Trade shall deliver to every applicant who is duly reported to have passed the engineer's examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, and ability, a Certificate of Competency as first class engineer or as second class engineer as the case may be [b].

Certificates of Competency for fishing boats.

Upon the subject of Certificates of Competency for masters or skippers and mates or second hands of fishing boats, the following provisions of the Merchant Shipping (Fishing Boats) Act, 1883, are now in force:—

Certificates for fishing boats heretofore granted to be deemed to have been granted under 17 & 18 Vict., c. 104, Part III. Power of Board of Trade to issue certificates for fishing boats.

Whereas persons desirous of acting as masters or skippers or as mates or second hands of fishing boats or of a particular class of fishing boats have obtained from the Board of Trade certificates to the effect that they are competent to act as master or skipper or as mate or second hand of fishing boats of a particular class of fishing boats, be it enacted that all such certificates as aforesaid heretofore issued by the Board of Trade shall be deemed to have been granted under the Third Part of the Merchant Shipping Act, 1854 [c].

The Board of Trade may issue certificates under section one hundred and thirty-four of the Merchant Shipping Act, 1854, to the effect that the holder thereof is competent to act as skipper or as second hand of fishing boats or of a particular class of fishing boats in every case, according to the report made by the local examiners with reference to the applicant for a certificate, and according as the Board of Trade may from time to time prescribe in any rules made by them under the one hundred and thirty-second section of the Merchant Shipping Act, 1854: Provided that no skipper's certificate shall be granted to anyone who has not previously held a certificate as second hand for at least twelve months [d].

Availability of certificates referred to in this Act.

Every such certificate as in this Act referred to shall only entitle the person to whom it is to be given to be an officer of the class of fishing boats referred to in the certificate and none other, and of the grade therein named, or of a lower grade and of none other [e].

Provisions in the Merchant Shipping Acts to apply to certificates referred to in this Act.

All the provisions contained in the Acts relating to merchant shipping, with respect to or connected with the examination of applicants for certificates and the granting thereof, and the suspension and cancellation thereof, and Inquiries and Investigations into the conduct of the holders thereof, and all other provisions whatsoever in the said Acts relating to or connected with certificates of masters or mates, shall be deemed to have applied and shall apply to the certificates referred to in this Act and the holders thereof as if such certificates had been granted under the Third Part of the Merchant Shipping Act, 1854, and the holders thereof shall be entitled and

(a) 25 & 26 Vict., c. 63, s. 6. (b) *Ibid*, s. 8.
(c) 46 & 47 Vict., c. 31, s. 36. (d) *Ibid.*, s. 37. (e) *Ibid.*, s. 38.

subject to such privileges and liabilities as they would be entitled or subjected to if such certificates had been granted under the Third Part of the Merchant Shipping Act, 1854 ([a]).

By section 41 it is provided that the Board of Trade may establish a register of skippers and second hands certificated as in the above Act referred to ([b]).

Record of grants, cancellations, &c., of Certificates.

In addition to such special register for fishing boats, the Merchant Shipping Acts contain provisions ([c]) for a public record of the grant of all certificates whether of competency or service, including engineer's certificates ([d]), and of all orders cancelling, suspending, altering, or otherwise affecting any certificate, and such provisions also prescribe the mode of proving all such matters and of substituting in certain cases an authentic copy for a lost certificate ([e]).

Lost Certificate.

CERTIFICATES OF SERVICE.

Certificates of Service granted in the United Kingdom.

There are few Certificates of Service in force in comparison with Certificates of Competency because the former kind of qualification must as to foreign-going ships have been granted to masters and mates who had obtained a certain position prior to a period so remote as the 1st January, 1851, and as to home trade passenger ships to masters and mates who had attained a certain position prior to 1st January, 1854, while the recent enactment with respect to fishing boats only came into operation on the 25th August, 1883. Certificates of Service differ in form from Certificates of Competency and are granted respectively as follows: (that is to say),

To whom granted.

"1. Every person who before the 1st January, 1851, served as master in the British Merchant Service, or who has attained or attains the rank of lieutenant, master, passed mate, or second master, or any higher rank in the service of Her Majesty or of the East India Company, shall be entitled to a Certificate of Service as master for foreign-going ships:"

([a]) 46 & 47 Vict., c. 31, s. 39.

([b]) Certificates of Service are also to be granted under the above Act. *See* post, page 390.

([c]) 17 & 18 Vict., c. 104, s. 138. *See* also s. 242 and 25 & 26 Vict., c. 63, s.23, sub-sec. 4, as to the re-issue of cancelled or suspended certificates, and the grant of new certificates in place thereof.

([d]) 25 & 26 Vict., c. 63, s. 10.

([e]) 17 & 18 Vict., c. 104, s. 139.

"2. Every person who before the 1st January, 1851, served as mate in the British Merchant Service shall be entitled to a Certificate of Service as mate for foreign-going ships:"

"3. Every person who before the 1st January, 1854, has served as master of a home trade passenger ship, shall be entitled to a Certificate of Service as master for home trade passenger ships:"

"4. Every person who before the 1st January, 1854, has served as mate of a home trade passenger ship shall be entitled to a Certificate of Service as mate for home trade passenger ships:"

"And each of such Certificates of Service shall contain particulars of the name, place, and time of birth, and of the length and nature of the previous service of the person to whom the same is delivered; and the Board of Trade shall deliver such Certificates of Service to the various persons so respectively entitled thereto, upon their proving themselves to have attained such rank or to have served as aforesaid, and upon their giving a full and satisfactory account of the particulars aforesaid [a]."

Engineers' Certificates of Service.

The following provision is also in force with respect to Certificates of Service for engineers which are granted as follows: (that is to say),

To whom granted.

"1. Every person who before the first day of April, 1862, has served as first engineer in any foreign-going steamship of 100 nominal horse-power or upwards, or who has attained or attains the rank of engineer in the service of Her Majesty or of the East India Company shall be entitled to a 'first class engineer's Certificate' of Service."

"2. Every person who before the 1st day of April, 1862, has served as second engineer in any foreign-going steamship of 100 nominal horse-power or upwards, or as first or only engineer in any other steamship, or who has attained or attains the rank of first-class assistant engineer in the service of Her Majesty, shall be entitled to a 'second-class engineer's Certificate' of Service."

"Each of such Certificates of Service shall contain particulars of the name, place, and time of birth, and the length and nature of the previous service of the person to whom the same is delivered, and the Board of Trade shall deliver such Certificates of Service to the various persons so respectively entitled thereto, upon their proving themselves to have attained such rank or to have served as aforesaid, and upon their giving a full and satisfactory account of the particulars aforesaid [b]."

(a) 17 & 18 Vict., c. 104, s. 135.
(b) 25 & 26 Vict., c. 63, s. 9.

The following is the provision for granting Certificates of Service for fishing boats:—

Certificates of Service to be given to certain skippers of fishing boats.

Certificates of Service differing in form from Certificates of Competency shall be granted by the Board of Trade as follows:—

Every person who has before the first day of September one thousand eight hundred and eighty-three served as skipper or second hand in fishing boats to which this part of this Act applies or is applied, or such other fishing boats as the Board of Trade may think have afforded the person sufficient experience, for a period amounting in all to not less than twelve months, shall be entitled to a Certificate of Service as skipper or second hand (as the case may be) of a fishing boat: Provided that if he has been exclusively employed in a particular class or classes of such fishing boats, the certificate shall be limited to such class or classes of fishing boats.

Every such Certificate of Service should contain particulars of the name, place, and time of birth, and of the length and nature of the previous service of the person to whom the same is given, and the Board of Trade shall deliver such Certificate of Service to a person entitled thereto upon his proving to the satisfaction of the Board of Trade that he has served as aforesaid, and has been generally well-conducted on board of the boats on which he has served as aforesaid ([a]).

The provisions for recording the grant and other dealings with Certificates of Service, whether of masters and mates or engineers have been before referred to, see page 388.

COLONIAL CERTIFICATES OF COMPETENCY.

May be granted by Colonial Legislatures to Masters, Mates, and Engineers of British ships.

Have the same force as Board of Trade Certificates of Competency.

Colonial Certificates of Competency may now be granted under the provisions of the Merchant Shipping (Colonial) Act, 1869 ([b]), by the Legislatures of British possessions abroad for the purpose of qualifying persons to act as masters, mates, or engineers of British ships.

A Colonial Certificate duly granted in pursuance of the above provisions has the same force as a similar certificate granted by the Board of Trade, and must be accepted as entitling its *bonâ fide* holder to act in the capacity stated in it, or any inferior (but not a superior) capacity in any British ship all over the world ([c]).

To acquire this validity and force the provisions of section 8 of the Merchant Shipping (Colonial) Act, 1869 ([d]) must have been duly complied with.

([a]) 46 & 47 Vict., c. 41, s. 40.

([b]) 32 Vict., c. 11, s. 8.

([c]) *Ibid*, and Board of Trade Supplementary Instructions to Consuls, 1st August, 1877.

([d]) The section is set forth at length at page 152.

In accordance with those provisions, the Board of Trade must, before an Order in Council can be issued thereunder, be [a] satisfied, and report to Her Majesty that the examinations in the particular Colony are so conducted as to be equally efficient as the corresponding examinations in the United Kingdom, and that the Certificates are granted on such principles as to show the like qualifications and competency as those granted under the Merchant Shipping Acts, and are liable to be forfeited for the like reasons and in like manner. In some Colonies the machinery for conducting the examinations is so complete, that all the classes of Certificates recognised in the Imperial Acts and granted by the Board of Trade are likewise validly granted by the Colonial Legislature, but the prescribed conditions are not at present entirely fulfilled in the case of all the Colonies. It is therefore necessary not only to give a List of the Colonies in which Colonial Certificates of Competency have been declared of Imperial validity by Order in Council, but also to distinguish the grades to which the operation of the Order in Council has been limited in the particular Colony to which it relates.

Sec. 8, Merchant Shipping (Colonial) Act, 1869.

"Certificates of Competency of the following grades, which have been granted in the following Colonies since the date specified below, and under an Order in Council issued in accordance with the provisions of section 8 of the Merchant Shipping (Colonial) Act, 1869, are now recognised by the Board of Trade as of the same validity as if granted in the United Kingdom [b], viz.:—

"VICTORIA [c]. ...	Master, First Mate, Only Mate, Second Mate, First Class Engineer and Second Class Engineer. ...	4th January, 1870."
"DOMINION OF CANADA [d].	Master and Mate [e].	19th August, 1871."
"NEW ZEALAND [f].	Master Extra, Master, First Mate, Only Mate, Second Mate, First Class Engineer Extra, First Class	

[a] *See* Orders in Council, page 394. See also a reference to these certificates at page 87.

[b] Board of Trade Supplementary Instructions to Consuls, 1st August, 1877.

[c] *See* page 394 for Order now in force.

[d] *Ibid.*

[e] Equivalent to First Mate in the United Kingdom.

[f] *See* page 394 for Order now in force.

	Engineer, and Second Class Engineer. ...	1st May, 1872."
"NEW SOUTH WALES (a). ...	Master, First Mate, Second Mate, First Class Engineer, and Second Class Engineer....	18th June, 1872."
"SOUTH AUSTRALIA (b). ...	Master, First Mate, Only Mate, Second Mate, First Class Engineer, and Second Class Engineer.	12th May, 1874."
"MALTA AND ITS DEPENDENCIES (c).	Master, First Mate, Second Mate, First Class Engineer, and Second Class Engineer....	12th May, 1874."
"TASMANIA (d)....	Extra Master, Master, First Mate, Only Mate, Second Mate, First Class Engineer, Second Class Engineer. ...	1st April, 1876."
"BENGAL (e). ...	Master, First Mate, Only Mate, Second Mate, First Class Engineer, Second Class Engineer. ...	27th June, 1876."
"NEWFOUNDLAND (f).	Master, First Mate, Only Mate, Second Mate. ...	14th May, 1877."
"BOMBAY (g). ...	Master, First Mate, Only Mate, Second Mate, First Class Engineer, Second Class Engineer. ...	11th July, 1877."

(a) *See* page 394 for Order now in force.
(b) *Ibid.* (c) *Ibid.* (d) *Ibid.* (e) *Ibid.*
(f) *Ibid.* (g) *Ibid.*

COLONIAL CERTIFICATES OF SERVICE.

Colonial Certificates of Service.

Not included in the Merchant Shipping (Colonial) Act, 1869, or the Orders in Council thereunder.

Are not of Imperial validity or recognized in the Courts of Inquiry in the United Kingdom.

Certificates of Service have been granted by Colonial authorities under Colonial Acts or Ordinances, but this class of Certificates is not included in the operation of the Merchant Shipping (Colonial) Act, 1869 (a), or of the various Orders in Council before-mentioned, which relate exclusively to Colonial Certificates of Competency.

Colonial Certificates of Service, therefore, confer only a local qualification defined by the Colonial Acts or Ordinances under which they are granted, and not being of Imperial validity they are not recognized in the United Kingdom. The holders are not subject as such to the jurisdiction of the Courts of Inquiry created under the Imperial Merchant Shipping Acts, notwithstanding the clause inserted in all Orders in Council relating to Colonial Certificates of Competency, which provides (b) that every decision with respect to the cancellation or suspension of a certificate pronounced by any tribunal under the Merchant Shipping Acts shall extend equally to all the Colonial Certificates whether specified in the decision or not at the time possessed by the persons in respect of whom the decision is made. The Colonial authorities may or may not claim to exercise jurisdiction over Colonial Certificates of Service, but it has been held by the Wreck Commissioner that the Courts of Inquiry in the United Kingdom cannot deal with them on the ground that the Orders in Council cannot go beyond the provisions of the Merchant Shipping (Colonial) Act, 1869, which relates only to Colonial Certificates of Competency (c).

(a) *See ante*, page 152.
(b) *See* Appendix, page 400.
(c) The *Chilianwallah*. Report dated 9th March, 1878.

ORDER IN COUNCIL.

WITH REFERENCE TO USE, ISSUE, DELIVERY, CANCELLATION, AND SUSPENSION OF COLONIAL CERTIFICATES.

—o—

At the Court at Windsor, the 29th day of June, 1882.

PRESENT:

The Queen's Most Excellent Majesty in Council.

WHEREAS by the Merchant Shipping (Colonial) Act, 1869, it is (among other things) enacted, that where the Legislature of any British possession provides for the examination of and grant of Certificates of Competency to persons intending to act as masters, mates or engineers on board British ships, and the Board of Trade reports to Her Majesty that they are satisfied that the examinations are so conducted as to be equally efficient as the examinations for the same purpose in the United Kingdom under the Acts relating to merchant shipping, and that the certificates are granted on such principles as to show the like qualifications and competency as those granted under the said Acts, and are liable to be forfeited for the like reasons, and in the like manner, it shall be lawful for Her Majesty, by Order in Council,—

1. To declare that the said certificates shall be of the same force as if they had been granted under the said Acts.
2. To declare that all or any of the provisions of the said Acts which relate to Certificates of Competency granted under those Acts shall apply to the certificates referred to in the said Order.
3. To impose such conditions and to make such regulations with respect to the said certificates and to the use, issue, delivery, cancellation, and suspension thereof as to Her Majesty may seem fit, and to impose penalties not exceeding fifty pounds for the breach of such conditions and regulations.

And that upon the publication in the *London Gazette* of any such Order in Council as last aforesaid, the provisions therein-contained shall, from a date to be mentioned for the purpose in such Order, take effect as if they had been contained in the Act, and that it shall be lawful for Her Majesty in Council to revoke any Order made as aforesaid.

And whereas the Legislatures of the British Possessions of

Canada,
Malta and its Dependencies,
Victoria,
New Zealand,

New South Wales,
South Australia,
Tasmania,
Bengal,
Newfoundland,
Bombay, and Queensland,

have respectively provided for the examination of and grant of Certificates of Competency to persons intending to act as masters, mates, or engineers on board British ships, which certificates are hereinafter denominated Colonial Certificates of Competency, and the Board of Trade have reported to Her Majesty that they are satisfied that the said examinations for the same purpose in the United Kingdom under the Acts relating to Merchant Shipping, and that the certificates are granted on such principles as to show the like qualifications and competency as those granted under the said Acts, and are liable to be forfeited for the like reasons and in the like manner.

And whereas Her Majesty by various Orders in Council, and certain Orders in Council amending the same, has been pleased to declare, that subject to certain conditions and regulations therein contained the Colonial Certificates of Competency therein referred to granted by—

(*a.*) The Minister of Marine and Fisheries in Canada,
(*b.*) The Head of the Government of Malta and its Dependencies,
(*c.*) The Steam Navigation Board of Victoria appointed by the Government of Victoria,
(*d.*) The Governor for the time being of New Zealand,
(*e.*) The Marine Board of New South Wales,
(*f.*) The Marine Board of South Australia,
(*g.*) The Governor of Tasmania,
(*h.*) The Lieutenant-Governor of Bengal,
(*i.*) The Governor of Newfoundland,
(*j.*) The Governor of Bombay,
(*k.*) The Marine Board of Queensland,

shall be of the same force as if they had been granted under the Acts relating to merchant shipping.

And whereas by the condition or regulation numbered five contained in each of the said recited Orders in Council, it is provided that such Colonial Certificates of Competency shall be granted only to persons who for a period of three years immediately preceding their application for such Colonial Certificates, or who for several periods amounting together to three years, the earliest of which shall have commenced within five years prior to such application have been domiciled in or have served in a ship or ships registered in the said Possessions respectively, and that Certificates of Competency granted contrary to this regulation shall be regarded as improperly granted.

And whereas it has been represented to Her Majesty in Council

that the provisions of the said fifth condition or regulation in the said recited Orders in Council should be rescinded, and that other provisions should be substituted in lieu thereof.

And whereas it has been made to appear to Her Majesty that the said recited Orders in Council should be revoked, and a new Order in Council, modified and amended in manner aforesaid, substituted in lieu thereof.

Now, therefore, Her Majesty, by and with the advice and consent of Her Privy Council, doth hereby direct that from and after the 1st day of October, 1882, the following Orders in Council; that is to say,—

(*a.*) An Order in Council dated the 19th day of August, 1871, relating to Colonial Certificates of Competency granted by the Minister of Marine and Fisheries in Canada;

(*b.*) An Order in Council dated the 12th day of May, 1874, relating to Colonial Certificates of Competency granted by the Head of the Government of the Possession of Malta and its Dependencies;

(*c.*) An Order in Council dated the 12th day of February, 1876, relating to Colonial Certificates of Competency granted by the Steam Navigation Board of Victoria appointed by the Governor of the said Possession of Victoria;

(*d.*) An Order in Council dated the 12th day of February, 1876, relating to Colonial Certificates of Competency granted by the Governor for the time being of the Possession of New Zealand;

(*e.*) An Order in Council dated the 12th day of February, 1876, relating to Colonial Certificates of Competency granted by the Marine Board of the Possession of New South Wales;

(*f.*) An Order in Council dated the 12th day of February, 1876, relating to Colonial Certificates of Competency granted by the Marine Board of South Australia;

(*g.*) An Order in Council dated the 20th day of November, 1880, relating to Colonial Certificates of Competency granted by the Governor of the Possession of Tasmania;

(*h.*) An Order in Council dated the 27th day of June, 1876, relating to Colonial Certificates of Competency grantedby the Lieutenant-Governor of the Possession of Bengal;

(*i.*) An Order in Council dated the 14th day of May, 1877, relating to Colonial Certificates of Competency granted by the Governor of the Possession of Newfoundland;

(*j.*) An Order in Council dated the 11th day of July, 1877, relating to Colonial Certificates of Competency granted by the Governor of the Possession of Bombay;

(*k.*) An Order in Council dated the 26th day of March, 1878, relating to Colonial Certificates of Competency granted by the Marine Board of the Possession of Queensland:

shall be and the same are hereby revoked; provided however that the revocation of the said Orders in Council shall not affect or invalidate any Colonial Certificate of Competency previously granted thereunder.

And Her Majesty is further pleased—

1. To declare that the Colonial Certificates of Competency granted by—

(*l.*) The Minister of Marine and Fisheries in the Possession of Canada, and the Governor of the Possession of Newfoundland to persons intending to act as masters and mates on Board British ships;

(*m.*) The Head of the Government of the Possession of Malta and its dependencies, the Governor for the time being of the Possession of New Zealand, the Governor of the Possession of Tasmania, the Marine Board of the Possession of Queensland, the Lieutenant-Governor of the Possession of Bengal, and the Governor of the Possession of Bombay, to persons intending to act as masters, mates, or engineers on board British ships;

(*n.*) The Steam Navigation Board of Victoria appointed by the Government of the Possession of Victoria to persons intending to act as masters, mates, or engineers of British sea-going steamships;

(*o.*) The Marine Board of the Possession of New South Wales to persons intending to act as masters, first mates, or second mates, or as first-class engineers, or second-class engineers on board British ships;

(*p.*) The Marine Board of the Possession of South Australia to persons intending to act as masters, first mates, only mates, or second mates, or first-class engineers, or second-class engineers on board British ships:

shall be of the same force as if they had been granted under the said Acts.

2. To declare that all the provisions of the said Acts which relate to Certificates of Competency for the Foreign trade granted under those Acts, except so much of the 139th section of the Merchant Shipping Act, 1854, and the 10th section of the Merchant Shipping Amendment Act, 1862, as requires the delivery by the Board of Trade to any master, mate, or engineer of a copy of any certificate to which he appears to be entitled as therein mentioned, so much of the third paragraph of the 23rd section of the said last-mentioned Act as requires at the conclusion of a case relating to the cancelling or suspending of a certificate, such certificate if cancelled or suspended, to be forwarded to the Board of Trade, and the whole of the provisions of the fourth paragraph of the same section shall apply to such Colonial Certificates of Competency, provided, however, that the foregoing exceptions shall not, as regards Colonial Certifi-

cates of Competency granted by the Governor for the time being of the British Possession of New Zealand, interfere with or suspend the operation of an Act of the Legislature of New Zealand, entitled the Merchant Shipping Acts Adoption Act, 1869 (32 & 33 Vict., No. 5).

3. To impose and make the conditions and regulations set out in the schedule hereto, numbered 1 to 10 respectively, with respect to the said Colonial Certificates of Competency, and to the use, issue, delivery, cancellation, and suspension thereof, and to impose for the breach of such conditions and regulations the penalties therein mentioned.

This Order shall take effect in each of the said possessions from and after the 1st day of October, 1882, and shall apply not only to Colonial Certificates of Competency granted under this Order, but also to such as shall have been granted under the Orders hereby revoked and be subsisting at the above date.

C. L. PEEL.

SCHEDULE.

CONDITIONS AND REGULATIONS

WITH RESPECT TO THE USE, ISSUE, DELIVERY, CANCELLATION, AND SUSPENSION OF COLONIAL CERTIFICATES OF COMPETENCY.

Interpretation Clause.

1. In the construction and for the purposes of these conditions and regulations the following terms shall have the respective meanings hereinafter assigned to them, that is to say:—

"*Colonial Certificate of Competency*" shall mean a Certificate of Competency authorised to be granted by the legislative authority of a British possession to persons intending to act as masters, mates, or engineers of British ships on similar principles and conditions as those granted under the Imperial Acts relating to merchant shipping.

"*Authority*" shall mean the Governor, Lieutenant-Governor, administrator, head of the Government, minister, board, body, or corporation of or in any British possession for the time being authorised by the Legislature of such possession to grant Colonial Certificates of Competency.

Form of Certificate.

2. A Colonial Certificate of Competency shall be on parchment, and as nearly as possible similar in shape and form to the corresponding Certificates of Competency for the Foreign trade granted by the Board of Trade under the Acts relating to Merchant Shipping.

Name of Possession to be inserted.

3. A Colonial Certificate of Competency shall have the name of the British Possession in which the same is granted, inserted prominently on its face and back.

Certificates to be numbered consecutively.

4. The Colonial Certificates of Competency granted in each British Possession shall be numbered in consecutive order.

Lists of Certificates granted, cancelled, &c., to be sent to Registrar-General of Seamen.

5. The authority in each British Possession shall furnish the Registrar-General of Seamen in London, from time to time, with accurate lists of all such Colonial Certificates of Competency as may be granted therein or as may for any cause whatsoever be cancelled, suspended, renewed, or re-issued; and shall also furnish him with duplicates of the applications for examination made by the persons to whom such certificates are granted.

Certificates to be granted only upon proof of service at Sea.

5. A Colonial Certificate of Competency shall be granted only upon proof that the previous service at sea of the person applying for the same has been such as is required by the regulations for the time being in force in the United Kingdom with respect to certificates of the like grade.

Certificates of Competency granted contrary to this regulation, or upon any false, incorrect or insufficient proof, certificate or report of service, qualification, conduct, or character shall be regarded as improperly granted.

Certificates not to be granted when former are cancelled.

6. A Colonial Certificate of Competency shall not be granted to any person who may have had a certificate, whether granted by the Board of Trade or by the Government of a British Possession, cancelled or suspended under the provisions of the said Acts or of any Act for the time being in force in any part of Her Majesty's dominions, unless the period of suspension has expired, or unless intimation has been received from the Board of Trade, or the authority by whom the cancelled or suspended certificate was originally granted, to the effect that no objection to the grant of such Colonial Certificate is known to exist, or unless a new certificate has been granted to him by such board or authority; and in the last-named event no such Colonial Certificate of Competency shall be for a higher grade than the certificate so last granted as aforesaid.

Colonial Certificates of Competency granted contrary to this regulation shall be regarded as improperly granted.

Certificates improperly granted may be cancelled without formal investigation.

7. A Colonial Certificate of Competency which appears from information subsequently acquired, or otherwise, to have been improperly granted, whether in the above or in any other respect, may be cancelled by the authority by which the same was granted, or by the Board of Trade in the United Kingdom, without any formal investigation under "The Merchant Shipping Act, 1854," and the holder of such certificate shall thereupon deliver it to the Board of Trade or such authority or as they or either of them may direct, and in default thereof shall incur a penalty not exceeding fifty pounds, which shall be recoverable in the same manner as penalties imposed by the Acts relating to Merchant Shipping are thereby made recoverable.

Cancellation, &c., of a Certificate shall involve cancellation of all the other Certificates possessed by its Owner.

8. Every decision with respect to the cancellation or suspension of a certificate pronounced by any Board, Court, or Tribunal under the provisions of the said Acts, shall extend equally to all the Colonial Certificates at the time possessed by the person in respect of whom the decision is made, as well as to all certificates granted to him under any of the Acts relating to Merchant Shipping, and whether such certificates be specified in such decisions or not.

Certificates believed to be fraudulent may be demanded.

9. Any officer of the Board of Trade, or the Registrar-General of Seamen, or any of his officers, or a Superintendent of a Mercantile Marine Office, or a Consular Officer, or duly appointed shipping officer in a British Possession, may demand the delivery to him of any Colonial Certificate of Competency which he has reason to believe has been improperly issued, or is forged, altered, cancelled, or suspended, or to which the person using it is not justly entitled, and may detain such certificate for a reasonable period for the purpose of making inquiries respecting such issue, forgery, alteration, cancellation, suspension, or possession, and any person who, without reasonable cause, neglects or refuses to comply with such demand shall incur a penalty not exceeding twenty pounds or its equivalent in local currency, which shall be recoverable in the same manner as penalties imposed by the Acts relating to merchant shipping are thereby made recoverable.

Suspended Certificates to be re-issued only by Colony by which originally granted.

10. A Colonial Certificate of Competency which has from any cause been cancelled or suspended shall be renewed or re-issued only by the authority by which the same was originally granted.

REGULATIONS FOR PREVENTING COLLISIONS AT SEA.

At the Court at Osborne House, Isle of Wight, the 14th day of August, 1879.

PRESENT:

The Queen's Most Excellent Majesty in Council.

WHEREAS by "The Merchant Shipping Act Amendment Act, 1862," it was enacted, that on and after the first day of June one thousand eight hundred and sixty-three, or such later day as might be fixed for the purpose by Order in Council, the regulations contained in the table marked C in the Schedule to the said Act should come into operation and be of the same force as if they were enacted in the body of the said Act; but that Her Majesty might from time to time, on the joint recommendation of the Admiralty and the Board of Trade, by Order in Council, annul or modify any of the said Regulations, or make new Regulations in addition thereto or in substitution therefor; and that any alterations in, or additions to, such Regulations made in manner aforesaid should be of the same force as the Regulations in the said Schedule:

And whereas, by the same Act, it was further provided, that whenever it should be made to appear to Her Majesty that the Government of any foreign country was willing that the regulations for preventing collisions contained in Table C in the Schedule to the said Act, or such other Regulations for preventing collisions as are for the time being in force under the said Act, should apply to the ships of such country when beyond the limits of British jurisdiction, Her Majesty might, by Order in Council, direct that such Regulations should apply to the ships of the said foreign country, whether within British jurisdiction or not; and it was further provided by the said Act, that whenever an Order in Council had been issued applying any Regulation made by or in pursuance of the said Act to the ships of any foreign country such ships should, in all cases arising in any British Court, be deemed to be subject to such Regulation, and should, for the purpose of such Regulation, be treated as if they were British ships:

And whereas, by an Order in Council made in pursuance of the said recited Act, and dated the ninth day of January one thousand

eight hundred and sixty-three, Her Majesty was pleased to direct:—First, that the Regulations contained in the Schedule to the said Act should be modified by the substitution for such Regulations of certain Regulations appended to the said Order:

Secondly, that the said Regulations appended to the said Order should, on and after the first day of June one thousand eight hundred and sixty-three, apply to French ships, whether within British jurisdiction or not:

And whereas, by several Orders in Council subsequently made, Her Majesty was pleased to direct that the Regulations appended to the said Order of the ninth of January one thousand eight hundred and sixty-three should apply to ships of the countries specified in the said orders, whether within British jurisdiction or not:

And whereas, by Order in Council dated the thirtieth day of July one thousand eight hundred and sixty-eight, Her Majesty, on the joint recommendation of the Admiralty and the Board of Trade, was pleased to make certain additions to the Regulations appended to the said first-recited Order in Council, for the purpose of explaining Articles 11 and 13 of the said Regulations, and of removing doubt and misapprehension concerning the effect of the said two Articles:

And whereas the Admiralty and the Board of Trade have jointly recommended to Her Majesty, that the Regulations contained in the Order in Council dated the ninth day of January one thousand eight hundred and sixty-three, and the additions to the said Regulations contained in the said Order in Council of the thirtieth day of July, one thousand eight hundred and sixty-eight shall be annulled from the first day of September one thousand eight hundred and eighty, and there shall be substituted for the said Regulations and additions respectively the new Regulations herein-after set forth:

And whereas it has been made to appear to Her Majesty that the Governments of the several Foreign countries mentioned in the Second Schedule hereto are respectively willing that the Regulation contained in the First Schedule hereto shall apply to ships of the said countries respectively, whether within British jurisdiction or not:

Now, therefore, Her Majesty, by virtue of the powers vested in Her by the said recited Act, and by and with the the advice of Her Privy Council, is pleased to direct:—

First, that on and after the first day of September, one thousand eight hundred and eighty, the Regulations appended to the said Order in Council of the ninth day of January, one thousand eight hundred and sixty-three, and the additions to the said Regulations contained in the said Order in Council of the

thirtieth day of July one thousand eight hundred and sixty-eight shall be annulled, and that there shall be substituted for the said Regulations and additions respectively the new Regulations contained in the First Schedule thereto.

Second, that the said Regulations contained in the said First Schedule hereto shall, from and after the first day of September one thousand eight hundred and eighty, apply to ships of the countries mentioned in the said Second Schedule hereto, whether within British jurisdiction or not.

C. L. PEEL.

FIRST SCHEDULE.

REGULATIONS FOR PREVENTING COLLISIONS AT SEA.

Preliminary.

Art. 1. In the following rules every steamship which is under sail and not under steam is to be considered a sailing ship; and every steamship which is under steam, whether under sail or not, is to be considered a ship under steam.

Rules concerning Lights.

Art. 2. The lights mentioned in the following Articles, numbered 3, 4, 5, 6, 7, 8, 9, 10, and 11, and no others, shall be carried in all weathers, from sunset to sunrise.

Art. 3. A seagoing steamship when under way shall carry—

(*a.*) On or in front of the foremast, at a height above the hull of not less than 20 feet, and if the breadth of the ship exceeds 20 feet then at a height above the hull not less than such breadth, a bright white light, so constructed as to show an uniform and unbroken light over an arc of the horizon of 20 points of the compass; so fixed as to throw the light 10 points on each side of the ship, viz., from right ahead to two points abaft the beam on either side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles.

(*b.*) On the starboard side, a green light so constructed as to show an uniform and unbroken light over an arc of the horizon of 10 points of the compass; so fixed as to throw the light from right ahead to 2 points abaft the beam on the starboard side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.

(*c.*) On the port side, a red light, so constructed as to show an uniform and unbroken light over an arc of the horizon of 10 points of the compass; so fixed as to throw the light

from right ahead to 2 points abaft the beam on the port-side; and of such a character as to be visible on a dark night with a clear atmosphere, at a distance of at least two miles.

(*d.*) The said green and red side lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

Art. 4. A steamship, when towing another ship, shall, in addition to her side lights, carry two bright white lights in a vertical line one over the other, not less than three feet apart, so as to distinguish her from other steamships. Each of these lights shall be of the same construction and character, and shall be carried in the same position, as the white light which other steamships are required to carry.

Art. 5. A ship, whether a steamship or a sailing ship, when employed either in laying or in picking up a telegraph cable, or which from any accident is not under command, shall at night carry, in the same position as the white light which steamships are required to carry, and, if a steamship, in place of that light, three red lights in globular lanterns, each not less than ten inches in diameter, in a vertical line one over the other, not less than three feet apart: and shall by day carry in a vertical line one over the other, not less than three feet apart, in front of, but not lower than her foremast head, three black balls or shapes, each two feet in diameter.

These shapes and lights are to be taken by approaching ships as signals that the ship using them is not under command, and cannot therefore get out of the way.

The above ships, when not making any way through the water, shall not carry the side lights, but when making way shall carry them.

Art. 6. A sailing ship under way, or being towed, shall carry the same lights as are provided by Article 3 for a steamship under way, with the exception of the white light, which she shall never carry.

Art. 7. Whenever, as in the case of small vessels during bad weather, the green and red side-lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for use; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with proper screens.

Art. 8. A ship, whether a steamship or a sailing ship, when at anchor, shall carry, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light, in a globular lantern of not less than eight inches in diameter, and so constructed as to show a clear uniform and unbroken light, visible all round the horizon, at a distance of at least one mile.

Art. 9. A pilot vessel, when engaged on her station on pilotage duty, shall not carry the lights required for other vessels, but shall carry a white light at the masthead, visible all round the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes.

A pilot vessel when not engaged on her station on pilotage duty, shall carry lights similar to those of other ships.

Art. 10 (a). (*a.*) Open fishing boats and other open boats when under way shall not be obliged to carry the side lights required for other vessels; but every such boat shall in lieu thereof have ready at hand a lantern with a green glass on the one side and a red glass on the other side; and on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.

(*b.*) A fishing vessel, and an open boat, when at anchor, shall exhibit a bright white light.

(*c.*) A fishing vessel, when employed in drift net fishing, shall carry on one of her masts two red lights in a vertical line one over the other, not less than three feet apart.

(*d.*) A trawler at work shall carry on one of her masts two lights in a vertical line one over the other, not less than three feet apart, the upper light red, and the lower green, and shall also either carry the side lights required for other vessels, or, if the side lights cannot be carried, have ready at hand the coloured lights as provided in Article 7, or a lantern with a red and a green glass as described in paragraph (*a.*) of this Article.

(*e.*) Fishing vessels and open boats shall not be prevented from using a flare-up in addition, if they desire to do so.

(*f.*) The lights mentioned in this Article are substituted for those mentioned in the 12th, 13th, and 14th Articles of the Convention between France and England scheduled to the British Sea Fisheries Act, 1868.

(*g.*) All lights required by this Article, except side lights, shall be in globular lanterns so constructed as to show all round the horizon.

(a) *See* Order in Council dated 23rd August, 1883, suspending the operation of article 10, page 408.

Art. 11. A ship which is being overtaken by another shall show from her stern to such last-mentioned ship a white light or a flare-up light.

Sound Signals for Fog, &c.

Art. 12. A steamship shall be provided with a steam whistle or other efficient steam sound signal, so placed that the sound may not be intercepted by any obstructions, and with an efficient fog horn to be sounded by a bellows or other mechanical means, and also with an efficient bell. A sailing ship shall be provided with a similar fog horn and bell.

In fog, mist, or falling snow, whether by day or night, the signals described in this Article shall be used as follows; that is to say,

(*a.*) A steamship under way shall make with her steam whistle, or other steam sound signal, at intervals of not more than two minutes, a prolonged blast.

(*b.*) A sailing ship under way shall make with her fog horn, at intervals of not more than two minutes, when on the starboard tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession.

(*c.*) A steamship and a sailing ship, when not under way, shall, at intervals of not more than two minutes, ring the bell.

Speed of Ships to be moderate in Fog, &c.

Art. 13. Every ship, whether a sailing ship or steamship, shall, in a fog, mist, or falling snow, go at a moderate speed,

Steering and Sailing Rules.

Art. 14. When two sailing ships are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, viz.:—

(*a.*) A ship which is running free shall keep out of the way of a ship which is close-hauled.

(*b.*) A ship which is close-hauled on the port tack shall keep out of the way of a ship which is close-hauled on the starboard tack.

(*c.*) When both are running free with the wind on different sides, the ship which has the wind on the port side shall keep out of the way of the other.

(*d.*) When both are running free with the wind on the same side, the ship which is to windward shall keep out of the way of the ship which is to leeward.

(*e.*) A ship which has the wind aft shall keep out of the way of the other ship.

Art. 15. If two ships under steam are meeting end on, or nearly

end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

This article only applies to cases where ships are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two ships which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are, when each of the two ships is end on, or nearly end on, to the other; in other words, to cases in which, by day, each ship sees the masts of the other in a line, or nearly in a line, with her own; and by night, to cases in which each ship is in such a position as to see both the side lights of the other.

It does not apply by day, to cases in which a ship sees another ahead crossing her own course; or by night, to cases where the red light of one ship is opposed to the red light of the other, or where the green light of one ship is opposed to the green light of the other, or where a red light without a green light, or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead.

Art. 16. If two ships under steam are crossing, so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other.

Art. 17. If two ships, one of which is a sailing ship, and the other a steamship, are proceeding in such directions as to involve risk of collision, the steamship shall keep out of the way of the sailing ship.

Art. 18. Every steamship, when approaching another ship, so as to involve risk of collision, shall slacken her speed or stop and reverse, if necessary.

Art. 19. In taking any course authorised or required by these Regulations, a steamship under way may indicate that course to any other ship which she has in sight by the following signals on her steam-whistle, viz.:—

One short blast to mean "I am directing my course to starboard":

Two short blasts to mean "I am directing my course to port":

Three short blasts to mean "I am going full speed astern."

The use of these signals is optional; but if they are used, the course of the ship must be in accordance with the signal made.

Art. 20. Notwithstanding anything contained in any preceding Article, every ship, whether a sailing ship or a steamship, overtaking any other shall keep out of the way of the overtaken ship.

Art. 21. In narrow channels every steamship shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such ship.

Art. 22. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course.

Art. 23. In obeying and construing these rules due regard shall be had to all dangers of navigation; and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

No Ship, under any Circumstances, to neglect proper precautions.

Art. 24. Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

Reservation of Rules for Harbours and Inland Navigation.

Art. 25. Nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbour, river, or inland navigation.

Special Lights for Squadrons and Convoys.

Art. 26. Nothing in these rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war or for ships sailing under convoy.

SECOND SCHEDULE.

Austria-Hungary.	Italy.
Belgium.	Netherlands.
Chili.	Norway.
Denmark.	Portugal.
France.	Russia.
Germany.	Spain.
Great Britain.	Sweden.
Greece.	United States.

AT THE COURT AT OSBORNE HOUSE, ISLE OF WIGHT, THE 23RD DAY OF AUGUST, 1883.

PRESENT,

The Queen's Most Excellent Majesty in Council.

WHEREAS by Order in Council, made in pursuance of the Merchant Shipping Act Amendment Act, 1862, and dated the fourteenth day of August, one thousand eight hundred and seventy-nine, Her Majesty, on the joint recommendation of the Admiralty and the Board of Trade, was pleased to direct that on and after the first day of September, one thousand eight hundred and eighty, the Regulations for preventing collisions at sea, contained in an Order in

Council dated the ninth day of January, one thousand eight hundred and sixty-three, and the additions by an Order in Council dated the thirtieth day of June, one thousand eight hundred and sixty-eight, made thereto, should be annulled, and that there should be substituted therefor the new Regulations contained in the First Schedule to the said first-named Order in Council, and that the same should, from and after the first day of September, one thousand eight hundred and eighty, apply to ships of the countries mentioned in the said Second Schedule thereto, whether within British jurisdiction or not.

And whereas by Order in Council, dated the eighteenth day of August, one thousand eight hundred and eighty-two, Her Majesty was pleased to direct that the operation of the Article numbered 10 of the New Regulations contained in the First Schedule of the said Order in Council of the fourteenth day of August, one thousand eight hundred and seventy-nine, should be suspended until the first day of September, one thousand eight hundred and eighty-three, and that in lieu thereof, and in substitution therefor, the Article numbered 9 of the Regulations appended to the said Order in Council of the ninth day of January, one thousand eight hundred and sixty-three, should continue and remain in force until the said first day of September, one thousand eight hundred and eighty-three.

And whereas the Admiralty and the Board of Trade have jointly recommended to Her Majesty that the operation of the said Article numbered 10, shall be further suspended until the first day of March one thousand eight hundred and eighty-four, and that, in lieu thereof and in substitution therefor, the said Article numbered 9 shall continue and remain in force until the said first day of March, one thousand eight hundred and eighty-four.

Now therefore, Her Majesty, by virtue of the powers vested in Her by the said recited Act, and by and with the advice of Her Privy Council, is pleased to direct that the operation of the said Article numbered 10 of the New Regulations contained in the First Schedule of the said Order in Council of the fourteenth day of August, one thousand eight hundred and seventy-nine, shall be suspended until the first day of March, one thousand eight hundred and eighty-four, and that, in lieu thereof, and in substitution therefor, the said Article numbered 9 of the Regulations appended to the said Order in Council of the ninth day of January, one thousand eight hundred and sixty-three, shall continue and remain in force until the said first day of March, one thousand eight hundred and eighty-four.

C. L. Peel.

Article 9 of the Regulations appended to the Order in Council of 9th January, 1863, provides as follows :—

Open fishing boats and other open boats shall not be required to

carry the side lights required for other vessels; but shall, if they do not carry such lights, carry a lantern having a green slide on the one side and a red slide on the other side; and on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.

Fishing vessels and open boats, when at anchor, or attached to their nets and stationary, shall exhibit a bright white light.

Fishing vessels and open boats shall, however, not be prevented from using a flare-up in addition, if considered expedient.

INVESTIGATIONS IN BRITISH POSSESSIONS ABROAD (a).

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INDIA.

THE INDIAN MERCHANT SHIPPING ACT, 1883.

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ACT No. V. OF 1883.

Passed by the Governor-General of India in Council.

(*Received the assent of the Governor-General on the 23rd February, 1883.*)

An Act for the further amendment of the law relating to merchant shipping.

WHEREAS it is expedient to amend the law relating to investigations into casualties affecting ships and charges against masters, mates and engineers;

And whereas it is also expedient to provide, in other respects hereinafter appearing, for the regulation and control of merchant shipping;

It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

Short title.

1. (1) This Act may be called the Indian Merchant Shipping Act, 1883.

Extent.

(2) It extends to the whole of British India;

Commencement.

(3) And it shall come into force on the first day of January, 1884.

IV of 1875. Repeal of enactments.

2. (1) The Indian Merchant Shipping Act, 1875, and Act XIII. of 1878 (*an Act to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices, and to amend the Indian Merchant Shipping Act*, 1875, *and the Indian Ports Act*, 1875), are hereby repealed.

(2) But all proceedings commenced, officers appointed, powers conferred, investigations held, certificates cancelled or suspended, agreements made and persons authorized under the said Acts or either of them, shall be deemed to have been respectively commenced, appointed, conferred, held, cancelled or suspended, made and authorized under this Act.

Definitions.

3. In this Act—

"Ship" includes every description of vessel used in navigation not propelled by oars; and

"Master" means any person (except a pilot or harbour-master) having for the time being control or charge of a ship.

Saving and provision as to powers for removal of master 17 & 18 Vict., c. 104.

4. (1) Nothing in this Act shall affect the powers conferred by section two hundred and forty of the Merchant Shipping Act, 1854,

or by section eighty of Act I. of 1859 (*for the amendment of the law relating to merchant shipping*), on Courts having Admiralty jurisdiction in India.

(2) The powers conferred by the last-mentioned enactment may, at any port in British India where there is no Court having Admiralty jurisdiction, be exercised by the principal Court of ordinary criminal jurisdiction at that port.

CHAPTER II.

Investigations into Shipping Casualties.

Chapter not to apply to certain ships.

5. Nothing in this chapter shall apply to any ship belonging to, or in the service of, Her Majesty or of the Government of India, or belonging to any foreign Prince or State.

Report of casualties to be made to Local Government.

6. (1) Whenever any magistrate or any officer appointed by the Local Government in this behalf, receives credible information that—

(*a*) Any ship has been lost, abandoned, stranded or materially damaged on or near the coasts of British India; or

(*b*) By reason of any casualty happening to, or on board of, any ship on or near those coasts, loss of life has ensued; or

(*c*) Any ship has caused loss or material damage to any other ship on or near those coasts; or

(*d*) Any such loss, abandonment, stranding, damage or casualty has happened elsewhere to, or on board of, any British ship, and any competent witnesses thereof have arrived or are to be found at any place in British India; or

(*e*) Any British ship is supposed to have been lost, and any evidence can be obtained in British India as to the circumstances under which she proceeded to sea or was last heard of;

He shall forthwith report in writing the information to the Local Government.

(2) In the cases mentioned in clauses (*a*), (*b*) and (*c*), the master, pilot, harbour-master, or other person in charge of the ship, or (where two ships are concerned) in charge of each ship, at the time of the loss, abandonment, stranding, damage or casualty, and

In cases under clause (*d*), where the master of the ship concerned, or (except in the case of a loss) where the ship concerned, proceeds to any place in British India from the place where the loss, abandonment, stranding, damage or casualty has occurred, the master of the ship,

Shall, on arriving in British India, give immediate notice of the loss, abandonment, stranding, damage or casualty to the nearest magistrate, or, when he arrives at a port in British India, to the officer appointed as aforesaid at that port.

(3) Any person bound to give notice under this section and wilfully failing to give the same shall be punished with fine which may

extend to five hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to three months.

Power for Local Government to appoint special Court of Investigation.

7. (1) If in any such case a formal Investigation into the facts mentioned in section six, clause (*a*), (*b*), (*c*), (*d*) or (*e*), appears to the Local Government to be requisite or expedient, the Local Government (whether notice is given or not) may appoint a special Court, consisting of not less than two nor more than four persons, and direct that Court to make the Investigation, and may fix the place for making the same.

(2) One of the members of the Court shall be a magistrate acting in or near the place where the investigation is made; another shall be some person conversant with maritime affairs; and the other or others (if any) shall be conversant with either maritime or mercantile affairs.

Power for other Courts to hold Investigations into casualties when so directed.

8. Every Court having Admiralty jurisdiction in British India, and the principal Court of ordinary criminal jurisdiction at every port of British India where there is no Court having Admiralty jurisdiction, is hereby authorized, when so directed by the Local Government, to make the Investigations referred to in section seven.

Power for Court of Investigation to inquire into charges against masters, mates and engineers.

9. (1) Any Court making an Investigation under section seven or section eight may inquire into any charge of incompetency or misconduct arising, in the course of the Investigation, against any master, mate or engineer, as well as into any charge of a wrongful act or default on his part causing any such loss, abandonment, stranding, damage or casualty as aforesaid.

(2) In every case in which any such charge, whether of incompetency or misconduct, or of a wrongful act or default, as aforesaid, arises against any master, mate or engineer in the course of an Investigation, the Court shall, before the commencement of the Inquiry, cause to be furnished to him a copy of the report or statement of the case upon which the Investigation has been directed.

Power for Local Government to direct investigation into charges of incompetency or misconduct.

10. (1) If the Local Government has reason to believe that there are grounds for charging any master, mate or engineer, holding a certificate granted by the Board of Trade or a Local Government, with incompetency or misconduct, otherwise than in the course of an Investigation under section seven or section eight, it may transmit a statement of the case to any Court mentioned in section eight, at or nearest to the place at which it may be convenient for the parties and witnesses to attend, and may direct that Court to make an Investigation into that charge.

(2) Before commencing the Investigation, the Court shall cause the master, mate or engineer so charged to be furnished with a copy of the statement transmitted by the Local Government.

Person accused to be heard.

(11.) For the purpose of an Investigation under this chapter into any charge against a master, mate or engineer, the Court may summon him to appear, and shall give him full opportunity of making a defence either in person or otherwise.

Powers of Courts as to evidence and regulation of proceedings.

12. For the purpose of any Investigation under this chapter, the Court making the Investigation, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have—

(a) If the Court is a special Court—the same powers as are exerciseable by the principle Court of ordinary criminal jurisdiction for the place at which the Investigation is made;

(b) If the Court is a Court having Admiralty jurisdiction or a principal Court of ordinary criminal jurisdiction—the same powers as are exerciseable by that Court in the exercise of its Admiralty or criminal jurisdiction (as the case may be).

Assessors.

13. (1) When any Investigation involves, or appears likely to involve, any question as to the cancelling or suspension of the certificate of a master, mate or engineer, the Court making the Investigation shall constitute as its Assessors for the purpose of the Investigation, two persons having experience in the merchant service; and in every other Investigation the Court making it may, if it thinks fit, constitute as its Assessor for the purposes of the Investigation any person conversant with maritime affairs and willing to act as its Assessor.

(2) The Assessors shall attend during the Investigation and deliver their opinions in writing, to be recorded on the proceedings. But the exercise of all powers conferred on the Court by this Act or any other enactment for the time being in force shall rest with the Court.

Power to arrest witnesses and cause entry and detention of vessels.

14. (1) If any Court making an Investigation under this chapter thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting the arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

(2) Any officer so authorized may, for the purpose of enforcing the entry, call to his aid any officers of police or customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.

XLV. of 1860.

(3) No person shall be detained by virtue of this section for more than forty-eight hours.

Power to commit for trial and bind over witnesses.

15. (1) Whenever, in the course of any such Investigation, it appears that any person has committed within the jurisdiction of any Court in British India an offence punishable under any law in force in British India, the Court making the Investigation may (subject to such rules consistent with this Act as the High Court may from time to time prescribe) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court, and may bind over any person to give evidence at the trial, and may, for the

purposes of this section, exercise all the powers of a magistrate of the first class or of a presidency magistrate.

(2) For the purpose of this section the Recorder of Rangoon shall, within the local limits of his ordinary civil jurisdiction, be deemed to be the High Court.

Depositions

16. (1) Whenever, in the course of any such trial, the testimony of any witness is required in relation to the subject-matter, any deposition previously made by him in relation to the same subject-matter before any Court making an Investigation under this chapter shall, if authenticated by the signature of the magistrate or presiding judge, be admissible in evidence on proof—

(a) That the witness cannot be found within the jurisdiction of the Court before which the trial is held; and

(b) That it was made in the presence of the person accused and that he had an opportunity of cross-examining the witness.

(2) A certificate by the magistrate or presiding judge that the deposition was made in the presence of the accused and that he had that opportunity shall, unless the contrary be proved, be sufficient evidence that it was so made and that he had that opportunity.

Report by Court to Local Government.

17. (1) The Court shall, in the case of all Investigations under this chapter, transmit to the Local Government a full report of the conclusions at which it has arrived, together with the evidence.

(2) In cases in which, under the Merchant Shipping Acts, 1854 to 1882, the Court is required to send a report to the Board of Trade, the report shall be sent through the Local Government, and the transmission of the report to the Local Government shall be a sufficient compliance with this section.

Chapter III.

Suspension and Cancellation of Certificates and Grant of fresh Certificates.

Saving of power to cancel and suspend certificates under English Acts.

18. Nothing in this Act shall affect the powers conferred by the Merchant Shipping Acts, 1854 to 1882, on the Courts conducting Investigations under sections seven, eight, nine and ten of this Act, to cancel or suspend certificates granted under any of the said Merchant Shipping Acts, or certificates to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869.

32 & 33 Vict., c. 11.

Power to issue local certificates in lieu of cancelled or suspended certificates.

19. (1) When any such Court cancels or suspends any such certificate, the Local Government may, if it thinks fit, and if it is so empowered by any enactment of a British Indian Legislature for the time being in force, grant under that enactment, but without examination, to the holder of the certificate, when the certificate is a certificate as master, a certificate as mate, and, when the certificate is a certificate as mate or engineer, a certificate as mate

or engineer, as the case may be, of a grade lower than that which he held at the time of the cancellation or suspension.

(2) A certificate so granted shall have the same effect as if it had been granted after examination, but shall not have the effect of a certificate granted under the provisions of the Merchant Shipping (Colonial) Act, 1869, or of any Order in Council under that Act.

32 & 33 Vict., c. 11.

(3) The Local Government may act under this section either in pursuance of a recommendation from the Court, or of its own motion.

Power for Local Government to suspend or cancel certificates in certain cases.
32 & 33 Vict., c. 11.

20. Any certificate (whether of competency or service) which has been granted by any Local Government to any master, mate or engineer, but has not been granted under the provisions of the Merchant Shipping (Colonial) Act, 1869, or of any Order in Council under the said Act may be suspended or cancelled, by that or any Local Government, in the following cases, that is to say:—

(*a*) If, on any Investigation made under this Act, the Court reports that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default, or that he is incompetent, or has been guilty of any gross act of drunkenness, tyranny or other misconduct;

(*b*) If, on any Investigation made under the Merchant Shipping Acts, 1854 to 1882, or on any Investigation made by any Court or Tribunal for the time being authorized by the legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters, mates, or engineers of ships, or as to shipwrecks or other casualties affecting ships, the Court or Tribunal reports that the master, mate, or engineer is incompetent, or has been guilty of any gross act of misconduct, drunkenness or tyranny, or that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default;

(*c*) If he is proved to have been convicted of any offence which, if committed in British India, would be non-bailable, or, if committed in England, would be a felony; and

(*d*) If (in case of a master) he has been superseded by the order of any Admiralty Court, or of any Naval Court constituted as provided by the Merchant Shipping Act, 1854, or by any other law for the time being in force:

17 & 18 Vict., c. 104.

Provided that, in any case in which an Investigation has been made into a charge against any master, mate, or engineer, a certificate shall not be suspended or cancelled under clause (*a*) unless the Local Government is satisfied that the holder of the certificate has been furnished before the commencement of the Investigation with the copy of the report or statement required by section nine or section ten, as the case may be.

Obligation to deliver up can-

21. Every master, mate, or engineer whose certificate is cancelled

or suspended under section twenty shall deliver it to the shipping master or to such other person as the Local Government which cancelled or suspended the certificate directs, and in default of such delivery shall, for each offence, be punished with fine which may extend to five hundred rupees.

celled or suspended certificate.

22. If the Local Government which cancels or suspends, under section twenty, a certificate of a master, mate, or engineer is not the Local Government that granted the same, the Local Government so cancelling or suspending the certificate shall report the proceedings, and the fact of cancellation or suspension, to the Local Government which granted the certificate.

Report to other Local Governments.

23. Every Local Government cancelling or suspending under section twenty the certificate of a master, mate, or engineer shall as soon as may be practicable, report to the Board of Trade the fact of such cancellation or suspension.

Report to Board of Trade.

24. (1) Any Local Government may at any time revoke any order of cancellation or suspension which it may have made under section twenty, or grant, without examination, to any person, whose certificate it has so cancelled, a new certificate of the same or of any lower grade.

Power to revoke cancellation or suspension and grant new certificate.

(2) A certificate so granted shall have the same effect as if it had been granted after examination, but shall not have the effect of a certificate granted under the provisions of the Merchant Shipping (Colonial) Act, 1869, or of any Order in Council under the said Act.

32 & 33 Vict., c. 11.

(3) A Certificate of Competency for a home-trade ship under Act I. of 1859 shall be deemed, for the purposes of this section, to be of a lower grade than a Certificate of Competency for a Foreign-going ship under the same Act.

ANTIGUA.

(*See* LEEWARD ISLANDS.)

ANGUILLA.

(*See* LEEWARD ISLANDS.)

BAHAMAS.

No. 14. 28 VICT., CAP. 14.

An Act to amend the Licensed Vessels Act, 1858.

(*Assented to 28th March*, 1865.)

Preamble.

WHEREAS it is expedient to provide for the holding of formal Investigations in the cases of wreck, or other marine casualty, as hereafter specified: May it therefore please the Queen's Most Excellent Majesty, that it may be enacted, and be it enacted by His Excellency Rawson William Rawson, Esq., Companion of the Most Honourable Order of the Bath, Governor and Commander-in-Chief in and over

the Bahama Islands, the Legislative Council and Assembly of the said Islands, and it is hereby enacted and ordained by the authority of the same, as follows:—

1. In any of the cases following, that is to say:

Whenever any ship is lost, abandoned, materially damaged, or stranded on or near the coasts of the Bahamas;

Whenever any ship causes loss or material damage to any other ship on or near such coasts;

Whenever by reason of any casualty happening to or on board of any ship on or near such coasts loss of life ensues:

Police Magistrate or other Justice to hold an Investigation into the cause of certain casualties to ships; report to be sent the Governor.

It shall be lawful for the Police Magistrate of the district at or near the place where such loss, damage, or casualty occurred, or at which the master of, or any part of the crew, shall arrive, or for any Justice of the Peace, specially authorized by the Governor for the purpose, or in the absence of the Police Magistrate, and in default of any other Justice being specially appointed, as aforesaid, for any other Justice of the Peace, there resident, to hold a formal Investigation into the cause of and circumstances attending such loss, abandonment, damage, stranding, or casualty: and any such Police Magistrate or other Justice shall, for that purpose, so far as relates to the summoning of parties, compelling the attendance of witnesses and the regulation of the proceedings, have the same powers as if the same were a proceeding relating to an offence or cause of complaint upon which he has power to make a summary conviction or order, or as near thereto as circumstances permit; and upon the conclusion of the case, the Magistrate or Justice shall send a report to the Governor, containing a full statement of the case, and of his opinion thereon, accompanying such report with the evidence taken, and such observations, if any, as he may think fit.

Persons of nautical skill may act as Assessors.

2. In cases where nautical skill and knowledge are required, it shall be lawful for the Governor, if he think fit, to nominate, or, failing such nomination, for the Police Magistrate or other Justice, holding the Investigation, to associate with him some person of nautical skill and knowledge to act as Assessor, and such Assessor shall, upon the conclusion of the case, either signify his concurrence in the report by signing the same, or if he dissents therefrom shall signify such dissent, and his reasons therefore, to the Governor.

Remuneration for duty imposed.

3. It shall be lawful for the Governor in Council, in his discretion, to allow to every Police Magistrate or other Justice holding an Investigation under this Act, and to the Assessors sitting with him, reasonable remuneration for the services performed by them, not exceeding in each case £3, and there shall be also paid to such Police Magistrate or other Justice, such further sum as he shall show to the satisfation of the Governor to be a reasonable charge for the clerical duties performed, either by himself or any clerk employed by him, in taking down the evidence and making a fair

copy thereof, and of the report, and for actual travelling expenses incurred by him; and there shall further be paid to each witness attending any Investigation as aforesaid, who may be brought from any island other than that in which the Investigation is held, or who may be about to depart without the jurisdiction of these Islands, such an allowance as the Governor in Council may deem fair and reasonable, not exceeding, however, the allowance usually made to witnesses summoned to the General Court in civil cases.

Duration clause.

4. This Act shall continue in force during the continuance of the Act to which it is an amendment.

BAHAMAS.

41 Vict., Cap. 6.

An Act to amend the Act 28 *Vict., c.* 14, *to amend the Licensed Vessels Act*, 1858.

[*Assented to* 14*th March*, 1878.]

Preamble.

Whereas under the provisions of the Act to amend the Licensed Vessels Act, 1858, the Magistrate or Justice, upon the conclusion of an investigation held under the authority of the Act, is directed to send a report to the Governor, containing a full statement of the case, and of his opinion thereon, with the evidence taken and such observations as he may think fit. And whereas it has been found necessary, in order that the enquiry contemplated by the said Act should be effective, that His Excellency the Governor should be invested with power to order a new or further enquiry in any case in which it may appear that such enquiry has not elicited all or the real facts attending the wreck or other marine casualty; May it therefore please the Queen's Most Excellent Majesty, that it may be enacted, and be it enacted by His Excellency William Robinson, Esquire, Companion of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over the Bahama Islands, the Legislative Council and Assembly of the said Islands, and it is hereby enacted and ordained by the authority of the same as follows:—

Enquiry, which has not been effective, may be again held.

I. Whenever it shall appear to the Governor that any enquiry held under the principal Act has, for any cause whatever, not been effective, or has not elicited the facts of the case, it shall be lawful for the Governor to direct that a further or new enquiry shall be held before the same Magistrate or Justice, or before any other Magistrate or Justice to be named in such order, and thereupon it shall be the duty of such Magistrate or Justice to proceed forthwith to hold a new or further enquiry as may be directed.

New enquiries to be conducted under principal Act.

II. Every new or further enquiry to be held under the authority of this Act shall be in all respects subject to the provisions of the principal Act in the same and like manner as if the same were an enquiry held under that Act.

BARBADOS.

No. 402.

An Act to make provision for Inquiry into the causes of Wrecks occurring on the coast of this Island.

No. 402. 17th March, 1864.

[17*th March*, 1864.]

WHEREAS wrecks not unfrequently take place on the coasts of this Island, and at present no competent tribunals exist by which the causes of, and circumstances attending such wrecks may be inquired into and investigated; and it is very desirable that such Tribunals should be established: Be it therefore enacted, by the Governor, Council, and Assembly of this Island, and by the authority of the same, as follows:—

Inquiry by Police Magistrate.

1. Whenever any ship is lost, abandoned, or materially damaged on or near the coasts of this Island, it shall be lawful for the Police Magistrate of the parish in or near which such loss, abandonment, or damage occurred, to make inquiry respecting such loss, abandonment, or damage. And he shall, for that purpose, have the following powers, that is to say:—

His powers.

1. He may go on board such ship and inspect the same.
2. He may by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers to any inquiries he thinks fit to make:
3. He may require and enforce the production of all books, papers, or documents, which he considers important for such purpose:
4. He may administer oaths, or in lieu thereof require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

Penalty for neglect or refusal to give evidence.

Every person who refuses to attend as a witness when summoned, or who refuses or neglects to make any answer, or give any return, or to produce any document in his possession, or to make or subscribe any declaration required of him under the authority of this Act, shall for each offence incur a penalty not exceeding ten pounds. And upon the conclusion of the case, the said Police Magistrate shall send in his Report thereof to the Governor.

Report to the Governor.

Constitution of a Court for the purposes of this Act.

2. Should it appear to the Governor, on reading such Report, that a more Formal Investigation is requisite or expedient, he shall notify his opinion to such Police Magistrate, who shall thereupon associate with himself the Police Magistrates of two adjoining parishes, to be nominated by the Governor, and shall, together with them, form a Court for the purpose of hearing the case. And the Court so formed shall proceed to hear and try the same; and shall, for that purpose, so far as relates to the examining of parties, compelling the attendance of witnesses, and the conduct and regulation of the proceedings, have and exercise the same powers as if the

same were a proceeding relating to an offence or cause of complaint, upon which a Police Magistrate has power to decide summarily, or as near thereto as circumstances permit. And upon the conclusion of the case, the said Court shall send in a report to the Governor, containing a full statement of the case, and of their opinion thereon, accompanied by such report of, or extracts from the evidence, and such observations as they may think fit.

Report to the Governor.

3. In cases where nautical skill and knowledge are required, the Governor shall have the power, either at the request of such Court, or at his own discretion, to appoint some person of nautical skill and knowledge to act as Assessor to such Court; and such Assessor shall, upon the conclusion of the case, either signify his concurrence in their Report by signing the same, or if he dissents therefrom shall signify such dissent, and his reasons therefor, to the Governor.

Nautical Assessor.

4. The said Court may make such order with respect to the costs of any such investigation, or any portion thereof, as they may deem just; and such costs shall be paid accordingly, and shall be recoverable in the same manner as other costs in summary proceedings before a Police Magistrate.

Costs.

5. Provided always that should any ship be lost, abandoned, or materially damaged in the Careenage or in Carlisle Bay, then and in such case the primary Inquiry hereby directed to be made, and the duties required to be performed, shall be made and performed by one of the Police Magistrates of the city of Bridge Town.

Primary Inquiry in case of loss, &c., in Careenage or Carlisle Bay.

BERMUDA.

No. 2.

An Act to provide for the holding of Inquiries as to Wrecks and Casualties.

[*9th February*, 1880.]

WHEREAS it is expedient to provide for the holding of Inquiries into shipwrecks and casualties to ships happening in these Islands, or on the coasts thereof, and into the loss or abandonment of ships in the surrounding waters, when the persons competent to give evidence concerning the same come into these Islands:

Preamble.

We therefore, &c., be it enacted, &c.:

Title.

I. This Act may be cited as "The Wreck Inquiry Act, 1880."

Constitution of Court of Wrecks Inquiry.

II. It shall be lawful for His Excellency the Governor from time to time, as occasion may require, by commission under his hand, and under the great seal of these Islands, to appoint a Court of Inquiry, consisting of not more than five, and not fewer than three, persons, of whom one at least shall be a person of judicial habits or knowledge, and one at least a person of nautical skill and experience, if the Governor shall find it practicable to appoint persons

so qualified, to hold Inquiry into any wreck, or casualty, or other matter provided for in the next section of this Act, and a majority of the Court shall be a quorum for the transaction of business.

Appointment of President and Clerk of the Court, and where Court to be held.

The Governor by the Commission shall appoint one member of the Court to act as President of the Court, and a fit and proper person as Clerk of the Court, and the Inquiry shall be conducted publicly, in such Court House or other public place, not being a Police Office, as the Commission shall appoint, and as far as practicable in accordance with the proceedings of ordinary Courts of Justice.

Cases in which a Commission of Inquiry may be issued.

III. A Commission of Inquiry may be issued under this Act in any of the following cases, that is to say :—

(1.) Whenever any ship is lost, abandoned, or materially damaged in these Islands, or on or near the coasts thereof;

(2.) Whenever any ship causes loss or material damage to any other ship in these Islands, or on or near the coasts thereof;

(3.) Whenever by reason of any casualty happening to or on board of any ship in these Islands, or on or near the coasts thereof, loss of life ensues;

(4.) Whenever any such loss, abandonment, damage, or casualty happens elsewhere, and any competent witnesses thereof arrive or are found in these Islands;

(5.) Whenever a charge of incompetency or misconduct is brought by any person against any master, mate, or engineer, of a British ship;

Report of proceedings of Court to be furnished to the Governor and copy deposited in the Secretary's office.

and in any such case an Inquiry may be held respecting such loss, abandonment, damage, or casualty, or such charge of incompetency or misconduct; and at the conclusion of the case, or as soon afterwards as possible, the Court shall state in open Court the decision to which it may have come with respect to cancelling or suspending certificates, and shall in all cases send a full report to the Governor upon the case, together with a fair copy of the evidence, and such observations (if any) as the Court may think fit, and shall also deposit in the Secretary's Office a fair copy of such report and evidence, including any extracts from any books or documents put in evidence which the Court may think expedient, and also a statement in detail of the whole costs of the Inquiry, all which documents shall be signed by the President of the Court, and kept in the Secretary's Office for reference.

Court may appoint a Nautical Assessor.

IV. Every such Court of Inquiry may, and if the investigation involves, or seems likely to involve, any question of the suspending or cancelling of the certificate of any master, mate, or engineer, shall take to its assistance an Assessor possessed of nautical or engineering experience in the merchant service and no such certificate shall be suspended or cancelled by the Court unless such an Assessor shall have been appointed, and shall concur in the decision of the Court as to such suspension or cancellation, nor

No certificate to be suspended or cancelled without concurrence of Assessor.

unless a copy of the report or statement upon which the Inquiry is ordered has been furnished to the owner of the certificate before the commencement of the investigation.

Court may require master, mate, or engineer to deliver up his certificate when cancelled or suspended.

V. If the Court shall adjudge that any Certificate of Competency or Service held by any master, mate, or engineer, shall be suspended or cancelled, the Court shall have power to require such certificate to be delivered, and such certificate shall accordingly be delivered, to the Court, to be forwarded, with the report and proceedings, to the Governor, for transmission to the Board of Trade.

Penalty.

Every master, mate, or engineer, whose certificate is suspended or cancelled in pursuance of this Act, shall, upon demand of the Court, deliver up his certificate to it, and in default shall incur a penalty not exceeding fifty pounds.

Powers of Court.

VI. Every Court of Inquiry constituted under this Act shall have the following powers, that is to say:

(1.) The Court may cancel or may suspend for such time as the Court shall think fit, the certificate of any master, mate, engineer, or other officer of any British ship when the Court shall find such master, mate, engineer, or other officer, guilty of any misconduct or want of care or skill which has caused or contributed to any loss of or damage to any ship, or any loss of life, or of any misconduct or incompetency as such master, mate, engineer, or other officer, which, in the judgment of the Court, renders him unfit to act as master, mate, engineer, or other officer of any ship;

(2.) The Court, or any member of the Court, may go on board any ship, and may inspect the same, or any part thereof, or any of the machinery, boats, equipments, or articles, on board thereof, not unnecessarily detaining or delaying her from proceeding on her voyage;

(3.) The Court, or any member thereof, may enter or inspect any premises, the entry or inspection of which appears to the Court to be requisite for the purposes of the report which it is directed to make;

(4.) The Court may, by summons under the hand of the President, or the hands of any two members thereof, require the attendance of all such persons as it thinks fit to call before it, and examine, for such purpose, and may require answers or returns to any inquiries it thinks fit to make;

(5.) The Court may require and enforce the production of all books, papers, or documents, which it considers important for such purpose;

(6.) The Court may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by it to make and subscribe a declaration of the truth of the statements made by him in his examination.

Penalties for giving false evidence.

Any person wilfully and corruptly making any false statement either on oath, or in any statement so declared to and subscribed by him, shall be liable to the pains and penalties of perjury.

Allowance to witnesses same as in criminal prosecutions.

VII. Every person attending the Court of Inquiry as a witness on being duly summoned, or examined by the Court as a witness, shall be allowed for such time as he shall attend for such examination at the rates allowed by law to witnesses in the Court of General Assize on criminal prosecutions.

Penalty for non-attendance as witness when summoned, or refusing to answer, &c.

Every person who being duly summoned neglects or refuses to attend any such Court as a witness, or who refuses or neglects to make any answer to any question put to him, or to give any return required by the Court, or to produce, when required by the Court, any document in his possession, or to make or subscribe any declaration to the truth of any statement made by him in his examination which the Court may require him to make and subscribe, shall for every such offence incur a penalty not exceeding ten pounds.

Allowance to officers and crew detained for the purpose of giving evidence before the Court.

VIII. Any master, or other officer, or seaman, of any vessel in these Islands who shall, by the order of any Court to be held under this Act, be detained in these Islands for the purpose of giving evidence on any such Inquiry, shall be allowed his expenses or compensation for such detention, for such time as he shall be actually detained in consequence of being so required, at the rates mentioned in the schedule to this Act, which compensation shall be considered part of the cost of the Inquiry.

Penalty for impeding Court.

IX. Any person who wilfully impedes any Court of Inquiry, or any member of such Court, in the exercise of any power hereby conferred, whether on board any ship or elsewhere, shall incur a penalty not exceeding ten pounds, and may be seized and detained by any person authorized by such Court, or any member thereof, until such offender can be conveniently taken before some Justice of the Peace.

Remunerations of members of Court and clerk.

X. Every Commissioner serving on any Court of Inquiry, and every Assessor appointed by the Court shall be allowed twenty shillings for every day of his attendance in the Court of Inquiry, and the clerk of the Commission shall be allowed sixteen shillings for every day of his attendance on the Commission, and shall also be allowed at the rate of sixpence a folio of one hundred words or figures, counting four figures as one word, for all fair copies and writings required by the Act, or by the Court of Inquiry to be made.

And of crier and constables.

The Crier and Constable in attendance on any Court of Inquiry shall each be allowed at the rate of eight shillings a day for their attendance on the Court; and every Constable serving any notice or summons shall be allowed the like fees as are allowed for service of any summons by the Fee Act of 1819. Provided that if the Court shall send a Constable into any neighbouring or distant Parish, which the Court is hereby authorized to do when occasion shall so

require, it shall be lawful for the Court to allow such Constable for such service any sum not exceeding twelve shillings, which the Court shall deem reasonable.

Payments under this Act may be made out of Public Treasury in first instance.

All payments sanctioned or allowed by this Act, and all costs of stationery or printing, or other necessary contingent charges incurred by any Court of Inquiry may be defrayed in the first instance out of the Public Treasury, if it seems advisable to the Governor on the certificate of the President, or any two members of the Court.

Costs of inquiry recoverable in certain cases from master, owner, or agent of vessel.

XI. Any Court of Inquiry held under this Act shall, if it deems it just and practicable, order the costs of the Inquiry, or any part thereof, to be paid into the Public Treasury, either immediately or within such time as the Court shall allow, by any master, mate, or engineer found guilty of any misconduct, or incompetency, found to have caused or contributed to the casualty, or by any owner or part owner of the ship in these Islands, or by the master, consignee, or agent of the ship, provided that no consignee or agent shall be liable beyond the value or proceeds in his hands of the property saved, clear of all salvage claims; or in case the Court shall find the statement or charge in respect of which the Inquiry has been held to be wilfully false, the Court may order such costs, or any part thereof, to be paid by the person making such statement or charge.

Manner in which costs of Inquiry are recoverable.

All costs ordered by the Court to be paid may be recovered by the Receiver-General before any two Justices of the Peace, and all penalties imposed by this Act may be sued for in like manner and recovered with the costs before any two Justices, with costs of suit, and in any such suit for costs, the certificate of the President or any two members of the Court of Inquiry shall be sufficient evidence of the judgment of such Court as to the amount of costs and the person or persons liable for the same; and such Justices may examine any consignee or agent, or any other person, as to the quality, quantity, and value of the property saved, and which has come to the hands of such consignee or agent, or the proceeds thereof in his hands, and may enforce their judgment by distress and sale or otherwise as in cases of debts not exceeding ten pounds; and any person dissatisfied with the judgment of the Justices shall have the like right of appeal, and under the like conditions as is provided by the Act entitled "An Act to Consolidate and Amend the Laws relative to Civil Suits before Justices of the Peace."

Jurisdiction of Vice-Admiralty Court not affected.

XII. Nothing in this Act contained shall be construed to affect in any way the jurisdiction of the Vice-Admiralty Court of Bermuda, howsoever the same may be acquired.

Duration.

XIII. This Act shall continue in force until and throughout the last day of December, one thousand eight hundred and eighty-five.

SCHEDULE.

Scale of Subsistence Allowance.

Rank.	Vessels of 1,000 tons register and upwards.				Vessels of 500 to 1,000 tons register.				Vessels of less than 500 tons register.			
	Passenger.		Cargo.		Passenger.		Cargo.		Passenger.		Cargo.	
Certificated Officers.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
Chief officer	15	0	12	6	12	6	10	6	12	6	10	6
Only mate...	12	6	10	0	12	6	10	0	12	6	10	0
Second officer	12	6	10	6	10	0	7	6	10	0	7	6
Third or other officer	10	6	7	6	7	6	7	6	7	6	7	6
Chief engineer	15	0	15	0	15	0	12	6	12	6	10	0
Assistant do.	12	6	10	0	10	0	7	6	10	0	7	6
Third or other engineer	10	6	7	6	7	6	7	6	7	6	7	6
Uncertificated Officers.												
To receive 2s. 6d. per diem less than would be paid to certificated officers holding like position.												
Carpenters...	7	0	7	0	7	0	7	0	7	0	7	0
Chief stewards on passenger ships	7	6	...		7	6	...		7	6	...	
Petty Officers.												
Quartermasters, boatswains, cooks, stewards, and donkeymen	6	0	6	0	6	0	6	0	6	0	6	0
A. B. seamen and firemen	5	0	5	0	5	0	5	0	5	0	5	0
Ordinary seamen ...	4	6	4	6	4	6	4	6	4	6	4	6
Apprentices	4	0	4	0	4	0	4	0	4	0	4	0

BERMUDA.

No. 6.

An Act to amend the Wreck Inquiry Act, 1880.

[*5th July*, 1880.]

Whereas the Wreck Inquiry Act, 1880, requires amendment:

We, therefore, &c., be it enacted, &c. :—

Short title.

I. This Act may be cited as the Wreck Inquiry Act, 1880, Amendment Act, 1880, and this Act and the Wreck Inquiry Act, 1880, may be cited collectively as the Wreck Inquiry Acts, 1880.

Wreck inquiry may be held in case of strand-

II. In addition to the cases mentioned in the 3rd section of the Wreck Inquiry Act, 1880, in which Commissions of Inquiry may be

issued, a Commission of Inquiry may be issued, in accordance with the provisions of the said Act, in the following case, namely :— ing or damage at these Islands.

(1.) Whenever any ship on or near the coasts or reefs of these Islands shall be stranded or damaged, and any witness is found in these Islands;

and all the provisions of the said Act shall apply to any such Inquiry or investigation.

III. Whereas by the 3rd section of the Act hereby amended it is enacted that in all cases of inquiry the Court of Inquiry shall send to the Governor a full report together with a fair copy of the evidence, and such observations, if any, as the Court shall think fit; it is hereby enacted, in lieu thereof, that at the conclusion of any Inquiry under the said Act, or this Act, the Court of Inquiry shall in all cases send a full report upon the case, with the evidence, and such observations, if any, as the Court may think fit, to the Governor, and shall also if they determine to cancel or suspend any certificate forward such certificate, with their report, to the Governor. Evidence to be forwarded with report to the Governor.

IV. This Act shall be construed as one with the Wreck Inquiry Act, 1880, and shall continue in force until and throughout the last day of December, one thousand eight hundred and eighty-five. Construction and duration.

BRITISH GUIANA (COURT OF POLICY).

No. 22, 1880.

An Ordinance to make Provision for due Investigation into the Causes of Shipping Casualties.

ORDINANCE enacted by His Excellency Cornelius Hendericksen Kortright, Esquire, Companion of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over the Colony of British Guiana, Vice-Admiral and Ordinary of the same, &c., &c., &c., with the advice and consent of the Honourable the Court of Policy of said Colony.

To all to whom these presents do, may, or shall come, greeting, be it known :—

Whereas it is expedient to provide for due investigation into the causes of and circumstances attending wrecks or other casualties affecting any British ship, occurring within the territorial limits of the Colony, and into charges of incompetency or misconduct on the part of masters, certificated engineers, or mates of British ships, in certain cases: Be it therefore enacted by His Excellency the Governor of British Guiana, with the advice and consent of the Court of Policy thereof, as follows :— Preamble.

1. This Ordinance may be cited as "The Shipping Casualties Investigations Ordinance, 1880." Short Title.

2. In this Ordinance, unless the context otherwise requires, Interpretation.

The term "the Court" means a Court of Inquiry appointed under the provisions of this Ordinance.

Court of Inquiry.

3. It shall be lawful for the Governor, in his discretion, to appoint a Court of Inquiry under this Ordinance in any of the following cases, that is to say:—

In case of shipwreck or default.

(1.) Where it appears to the Governor that there ought to be an Inquiry into the circumstances attending any shipwreck or other casualty affecting any British ship, or as to any alleged wrongful act or default by any master, certificated engineer, or mate of any British ship, or

Or drunkenness or tyranny of master, &c., or abandonment of ship, &c.

(2.) Where complaint is made by any person interested in any British ship, or in the cargo of such ship, or by the consignee of such ship or cargo, or by the master, certificated engineer, or mate of such ship, or by one-third of the crew of such ship, that the master, certificated engineer, or mate has been guilty of any gross act of misconduct, drunkenness or tyranny, or that the loss or abandonment of, or serious damage to any ship, or loss of life, has been caused by his wrongful act or default, and the person so alleged to be in fault is in British Guiana;

If ship not registered in British Guiana, shipwreck, &c., must be within limits thereof.

Provided that in the case of ships not registered in British Guiana the alleged shipwreck, casualty, wrongful act or default has taken place within the territorial limits of British Guiana.

Court of Inquiry—how constituted; authority of.

4. The Court of Inquiry shall consist of a Stipendiary Magistrate and two nautical persons to be appointed by the Governor, and the Stipendiary Magistrate appointed shall be president of the Court. Such Court shall have authority to inquire into any charges of incompetency or misconduct on the part of masters, mates, or certificated engineers of any British ship, and as to any shipwreck or other casualty affecting any ship or ships specified in the appointment of such Court, and shall have power to cancel or suspend certificates in accordance with the provisions of the Imperial statutes the Merchant Shipping Act 1854 and the Acts amending the said Acts authorizing such cancellation or suspension by Courts holding such investigations in a British possession.

Member of Court dying, &c.

5. In case any member of any Court of Inquiry shall be or become to be unwilling to act or shall die, the Governor may appoint another person similarly qualified in his place; and no Court of Inquiry shall lapse by reason of, or be otherwise affected by the death, absence or removal of the Governor appointing the same.

Court not to lapse by death, &c., of Governor.

Person complained against to have notice of holding of Court.

6. It shall be the duty of the President of the Court appointed on such Court of Inquiry to cause reasonable notice to be given to every person complained against of the time and place of the holding of such Court of Inquiry.

Duties of Court.

7. It shall be the duty of the Court to make a full, faithful and impartial inquiry into the matters specified in the appointment thereof, and the Court in cancelling or suspending certificates shall in all respects act in accordance with the provisions of the Imperial statutes which authorise such cancellation or suspension. It shall

be the duty of the Court to report to the Governor in writing the result of such inquiry, and also when required to furnish to the Governor a full statement of the proceedings of such Court and of the reasons leading to the conclusions arrived at or reported. Where the members of the Court are not unanimous in their opinions each member shall state in writing the conclusions he has arrived at and his reasons.

Court may make rules as to its own proceedings.

8. Each Court may make such rules for its guidance and the conduct and management of proceedings before it, and the hours, times, and places for its sittings, not inconsistent with its appointment, as it may from time to time think fit, subject only to the terms of its appointment. It shall be lawful for the Court to exclude any particular person or persons from any sitting of the Court either for the preservation of order, for the due conduct of the Inquiry, or for any other reason.

Court may exclude any person from any sitting.

Court may board and inspect ship, &c.

9. The members of every Court of Inquiry may go on board any ship in respect to which any such Inquiry is held, and may inspect the same or any part thereof, or any of the machinery, boats, equipment, or articles on board thereof, not unnecessarily detaining or delaying her from proceeding on any voyage.

Power of Court as to summoning of witnesses.

10. The Court shall have the power of a special Justice of the Peace of this Colony to summon witnesses and to call for the production of books, plans, and documents, and to examine on oath witnesses and parties concerned, and no member of the Court shall be liable to any action or suit, for any matter or thing done by him as a member of the Court. All summonses for the attendance of witnesses or other persons, or the production of documents may be in the form given in the schedule to this Ordinance, and shall be signed by one of the members of the Court, and oaths may be administered by any of the members of the Court, or by the Clerk.

Member of Court not liable to suit.

Form of summons, &c.

Persons refusing to be sworn;

Insulting or interrupting Court.

11. If any person present in Court shall be required to give evidence and shall without lawful excuse refuse to be sworn, or to give evidence, and if any person shall at the sitting of the Court wilfully insult any member of the Court, or any officer of the Court, or shall wilfully interrupt the proceedings of the Court, or otherwise misbehave in Court, it shall be lawful for any constable or other person, by order of the Court, to take the offender into custody and detain him until the rising of the Court; and the Court shall be empowered if it think fit by a warrant signed by the members of the Court or by a majority of them to commit any such offender to any prison for any time not exceeding one month, or to impose upon such offender a fine not exceeding forty-eight dollars for every such offence, and in default of payment thereof, to commit the offender to prison for any time not exceeding one month unless the said fine shall be sooner paid.

Warrant of commitment, &c.

Witness neglecting or refusing to appear.

12. If any person summoned as a witness before any Court shall neglect or refuse to appear at the time and place appointed by the

said summons, and otherwise to comply with the same, and if no just excuse shall be offered for such neglect or refusal, then (after proof upon oath of such summons having been served upon such person either personally or by leaving the same for him with some person of his place of abode) it shall be lawful for the Court to issue a warrant signed by the members of the Court or a majority of them to bring and have such person at a time and place therein mentioned before the Court to testify as aforesaid, and if on the appearance of the person so summoned, either in obedience to the said summons or upon being brought by virtue of the said warrant, such person shall refuse to be examined upon oath concerning the premises, or shall refuse to take such oath, or having taken such oath shall refuse without sufficient cause to answer such questions as shall be then put to him by or with the concurrence of the Court, or shall refuse, without sufficient cause, to produce any document which he may be summoned to produce, or shall refuse to subscribe his deposition, the Court may by warrant signed as aforesaid commit the person so refusing to any ordinary prison of the Colony for any time not exceeding one month, unless he shall in the meantime consent to be examined, and to answer concerning the premises, or to produce such documents, if any, or to subscribe his deposition, as the case may be, and in addition to being liable to be so dealt with, every person so acting shall be deemed guilty of an offence punishable on summary conviction, and on conviction shall be liable to a penalty not exceeding one hundred dollars: Provided that no person shall be punished for an offence under this section for any offence for which he has been punished under the provisions of section eleven.

Warrant may issue;

Refusal to give evidence;

Or to produce document.

Clerk of Court of Inquiry:

13. The Governor may appoint a clerk to afford clerical assistance, and to perform such duties connected with the Inquiry as the Court may prescribe, subject to the directions, if any, of the Governor.

Remuneration of.

14. The Governor may direct what remuneration, if any, shall be paid to the members of the Court or to the clerk.

Remuneration of Witnesses.

A witness summoned or attending at any Court may receive such reasonable remuneration as the President of the Court may certify should be allowed, not exceeding in any case what would be allowed to the witness for attendance at the Supreme Court of Civil Justice.

Expenses of Inquiry—how defrayed.

All the expenses connected with the appointment of any Court or any Inquiry under this Ordinance shall be defrayed from the sum provided for the miscellaneous expenses of justice.

Appointment of Court published in Official Gazette.

15. The appointment of any Court under this Ordinance shall be published in the Official Gazette, and shall take effect from the date of such publication.

Commencement.

16. This Ordinance shall come into operation and take effect on the publication thereof.

And that no ignorance may be pretended of this our Ordinance, these presents shall be printed and published in the customary manner.

Thus done and Enacted at our adjourned Assembly held at the Guiana Public Buildings, Georgetown, Demerara, this twenty-first day of August, one thousand eight hundred and eighty, and published on the twenty-eighth day of the same month.

(Signed) G. H. KORTRIGHT.

By Command of the Court,

(Signed) WILLIAM A. G. YOUNG,

Secretary.

SCHEDULE.

Summons to Witness.

To

A. B. (*name of witness and his calling and residence, if known.*)

You are hereby summoned to appear before (*here name the members of the Court*) appointed by the Governor to inquire (*state briefly the subject of the inquiry*) at (*place*) upon the day of 18 , at o'clock, and to give evidence respecting such Inquiry (*if the person summoned is to produce any documents add*) and you are hereby required to bring with you (*specify the books, plans, and documents required*).

Therefore fail not at your peril.

Given under the hand of member of the Court of Inquiry this day of 18 .

BRITISH HONDURAS.

ORDINANCE No. 7, 1879.

An Ordinance to Consolidate and Amend the Law relating to Wrecks, Casualties, and Salvage.

[*9th September*, 1879.]

No. 7. 1879.

BE it enacted by the Lieutenant-Governor of British Honduras, with the advice and consent of the Legislative Council thereof :—

Short Title.

1. This Ordinance may be cited for all purposes as "The Wrecks, Casualties, and Salvage Ordinance, 1879."

Repeal of Ordinance No. 22, 1878.

2. "The Wrecks, Casualties, and Salvage Ordinance, 1878," is hereby repealed.

Inquiries into Wrecks.

3. In any of the cases following, that is to say—

Inquiries to be instituted in cases of wreck and casualty.

Whenever any ship is stranded, lost, abandoned, or materially damaged on or near the coasts of British Honduras or of the Cays, subject to the jurisdiction thereof;

Whenever any ship causes loss or material damage to any other ship on or near such coasts;

Whenever, by reason of any casualty happening to or on board of any ship on or near such costs, loss of life ensues;

Whenever any such loss, abandonment, damage, or casualty happens elsewhere, and any competent witnesses thereof arrive, or are found at any place in this Colony, or on any of the Cays subject to the jurisdiction thereof;

It shall be lawful for the Collector or other principal Officer of Customs residing at or near the place where such loss, abandonment, damage, or casualty occurred, if the same occurred on or near the coasts of this Colony or its Cays, but if elsewhere at or near the place where such witnesses as aforesaid arrive or are found or can be conveniently examined, or for any other person, appointed for the purpose, by the Lieutenant-Governor to make inquiry respecting such loss, abandonment, damage, or casualty.

Powers and duties of Collector of Customs.

4. Every such Collector or other principal Officer of Customs, or other person so appointed shall have the following powers (that is to say):—

(1.) He may go on board any ship, and may inspect the same or any part thereof, or any of the machinery, boats, equipments, or articles on board thereof, to which the provisions of the Imperial "Merchant Shipping Act, 1854," apply, not unnecessarily detaining or delaying her from proceeding on any voyage;

(2.) He may enter and inspect any premises, the entry or inspection of which appears to him to be requisite for the purpose of the report, which he is directed to make;

(3.) He may by summons under his hand require the attendances of all such persons, as he thinks fit to call before him, and examine for such purpose, and may require answers or returns to any inquiries he thinks fit to make;

(4.) He may require and enforce the production of all books, papers, or documents, which he considers important for such purpose;

(5.) He may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination:

Witnesses expenses.

And every witness, so summoned as aforesaid, shall be allowed such expenses as would be allowed to any witness attending on subpœna to give evidence before the Supreme Court; and in case of any dispute as to the amount of such expenses, the same shall be referred by such Customs' Officer or other person to the Taxing Officer of the Supreme Court, who on request made to him for that purpose under the hand of such Customs' Officer or Inquisitor shall ascertain and certify the proper amount of such expenses; and every person who refuses to attend as a witness before any such Customs' Officer or other person, after having been required so to do in the manner hereby directed, and after having had a tender made to him of the expenses (if any) to which he is entitled as

aforesaid, or who refuses or neglects to make any answer, or to give any return, or to produce any document in his possession or to make or subscribe any declaration, which any such Customs' Officer or other person is hereby empowered to require, shall for each such offence incur a penalty not exceeding fifty dollars.

Penalty for impeding Customs' Officer in the execution of his duty.

5. Every person who wilfully impedes any such Customs' Officer, or other person appointed as aforesaid, in the execution of his duty, whether on board any ship or elsewhere, shall incur a penalty not exceeding fifty dollars, and may be seized and detained by such Customs' Officer or other person, or by any person or persons whom he may call to his assistance, until such offender can be conveniently taken before some Justice of the Peace or other person, having proper jurisdiction.

Procedure when formal investigation is necessary.

6. If it appears to such Customs' Officer or other person as aforesaid, either upon or without any such preliminary Inquiry as aforesaid, that a formal investigation is requisite or expedient, or if the Lieutenant-Governor so directs, he shall apply to any two Justices of the Peace or to the Police or other paid Magistrate to hear the case, and such Justices or Magistrate shall thereupon proceed to hear and try the same, and shall for that purpose, so far as relates to the summoning of parties, compelling the attendance of witnesses, and the regulation of the proceedings, have all such powers as in case of proceedings relating to an offence or cause of complaint are given to Justices of the Peace by "The Justices Summary Procedure Ordinance, 1878," or as near thereto as circumstances permit; and it shall be the duty of such Customs' Officer or other person as aforesaid, to superintend the management of the case, and to render such assistance to the said Justices or Magistrate as is in his power; and upon the conclusion of the case the said Justices or Magistrate shall send a full report upon the case with the evidence to the Lieutenant-Governor, and the Lieutenant-Governor shall transmit the same report and his confirmation or disallowance of any finding therein contained, to the Board of Trade in England.

Magistrate to send report to the Lieutenant-Governor, who is to transmit it to the Board of Trade.

Power to appoint nautical assessor.

7. The Justices or Magistrate holding a Formal Investigation into a shipping casualty shall hold the same with the assistance of an Assessor or Assessors of nautical, engineering, or other special skill or knowledge, to be appointed when practicable by the Lieutenant-Governor; and whenever such Justices or Magistrate shall be of opinion that the investigation is likely to involve the cancellation or suspension of the certificate of a master or mate, he shall, when practicable, appoint a person having experience in the Merchant Service to be one of the Assessors. Each Assessor shall either sign the report made on the investigation, or report to the Lieutenant-Governor his reasons for his dissent therefrom.

Costs of Investigations.

8. The said Justices or Magistrate may make such order with respect to the costs of any such investigation, or any portion thereof

as they or he may deem just, and such costs shall be paid accordingly, and shall be recoverable in the same manner as other costs incurred in summary proceedings before them or him, and in accordance with "The Justices Summary Procedure Ordinance, 1878," and the Lieutenant-Governor may, if in case he thinks fit so to do, pay the expense of any such investigation, and may pay to any such Assessor as aforesaid such remuneration as he thinks fit; and all such remunerations as are named in this section, and such costs if ordered by the Lieutenant-Governor to be paid, shall be paid out of any fund appropriated for the administration of justice.

Master or mate may be required to deliver certificate to be held until close of inquiry.

9. Such Justices or Magistrate as aforesaid may, if they or he think fit, require any master or mate possessing a Certificate of Competency or Service under the provisions of the "Merchant Shipping Act, 1854," or any other Act of the Imperial Parliament, or any certificated engineer possessing a certificate under the "Merchant Shipping Act Amendment Act, 1862," or any other Act of the Imperial Parliament, whose conduct is called in question, or appears to them or him likely to be called in question in the course of such investigation, to deliver such certificate to them or him, and they or he shall hold the certificate so delivered until the conclusion of the investigation, and shall then either return, suspend, or cancel the certificate of such master, mate, or engineer under the powers given to the Tribunal by which the case is investigated or tried by the "Merchant Shipping Act, 1854," and by the "Merchant Shipping Act Amendment Act, 1862," and shall forward the same with the report to the Lieutenant-Governor for transmission to the Board of Trade, and if any such master, mate, or engineer fails so to deliver his certificate when so required, he shall incur a penalty not exceeding two hundred and fifty dollars.

Cancelling certificate, or suspension thereof when and how.

10. No certificate shall be cancelled or suspended under this Ordinance, unless a copy of the report or statement of the case upon which such investigation is ordered has been furnished to the owner of the certificate before the commencement of the investigation, nor in the case of investigations conducted under section seven of this Ordinance, unless one Assessor at least expresses his concurrence in the report, and every investigation under section seven shall be conducted in such manner that any master, mate, or engineer, or other person whose conduct may be called in question, shall have an opportunity of making a defence.

* * * * *

Miscellaneous.

* * * * *

Interpretation of certain terms in this Ordinance.

36. In the construction and for the purposes of this Ordnance (if not inconsistent with the context or subject-matter) the following terms shall have the respective meaning hereinafter assigned to them, that is to say:—

"Master" shall include every person (except a pilot) having command or charge of any ship.

"Ship," shall include every description of vessel used in navigation, not propelled by oars only.

* * * * *

Passed the Legislative Council this eighth day of September, 1879.

W. GREY-WILSON,
Clerk of the Legislative Council.

I assent in Her Majesty's name, this ninth day of September, one thousand eight hundred and seventy-nine.

FRED. P. BARLEE,
Lieutenant-Governor.

CANADA.

Anno tricesimo secundo et tricesimo tertio Victoriæ Reginæ.

CAP. XXXVIII.

An Act respecting Inquiries and Investigations into shipwrecks and other matters.

[*Assented to 22nd June*, 1869.]

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:— **Preamble.**

1. In any of the cases following, that is to say, whenever any ship is lost, abandoned, or materially damaged on or near the lake, river or sea coasts of Canada, or any island or place adjacent thereto; **Inquiry to be instituted in cases of wreck and casualty.**

Whenever any ship causes loss or material damage to any other ship on or near such coasts, island or place;

Whenever by reason of any casualty happening to or on board of any ship on or near such coasts, island or place, loss of life ensues;

Whenever any such loss, abandonment, damage, or casualty happens elsewhere, and any competent witnesses thereof arrive or are found at any place in Canada;

The principal officer of Customs residing at or near the place where such loss, abandonment, damage, or casualty occurred, if the same occurred on or near the coasts of Canada, or any island or place adjacent thereto, but if elsewhere, at or near the place where such witness as aforesaid arrive, or are found, or can be conveniently examined, or any other person appointed for the purpose by the Minister of Marine and Fisheries, may make enquiry respecting such loss, abandonment, damage, or casualty. **Who shall make it.**

2. Every such officer or person as aforesaid shall have the following powers, that is to say:— **Powers of officers making inquiries.**

(1.) He may go on board any ship, and may inspect the same or any part thereof, or any of the machinery, boats, equipments, or

articles on board thereof, the boarding or inspection of which appears to him to be requisite for the purpose of the Inquiry he is required to make, not unnecessarily detaining any such ship from proceeding on any voyage.

(2.) He may enter and inspect any premises, the entry and inspection of which appears to him to be requisite for the purpose of the Inquiry he is to make;

(3.) He may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers or returns to any inquiries he thinks fit to make;

(4.) He may require and enforce the production of all books, papers, or documents which he considers important for such purpose;

(5.) He may administer oaths, or may, in lieu of requiring and administering an oath, require every person examined by him to make and subscribe a solemn affirmation or declaration of the truth of the statement made by him in his examination;

Wilfully false statements, perjury.

And any wilfully false statement made by any such witness on oath or solemn affirmation, or in any such declaration shall be a misdemeanour, punishable in the same manner as wilful and corrupt perjury, and every witness so summoned shall be allowed such expenses as would be allowed to any witness attending on subpœna to give evidence before any Court of record in the same Province of Canada, and in case of any dispute as to the amount of such expenses, the same shall be referred by such officer or person to the nearest prothonotary, or clerk, or master, or other taxing officer of any Court of record within the jurisdiction of which the attendance is required, who, on a request made to him for that purpose under the hand of such officer or person shall ascertain and certify the proper amount of such expenses; and every person who refuses to attend as a witness before any such officer or person, after having been required so to do in the manner hereby directed, and after having had a tender made to him of the expenses, if any, to which he is entitled as aforesaid, or who refuses or neglects to make any answer, or to give any return, or to produce any document in his possession, or to make or subscribe any solemn affirmation or declaration which any such officer or person is hereby empowered to require, shall for each such offence incur a penalty not exceeding forty dollars; but no such witness shall be compelled to answer, or suffer any penalty for refusing to answer, any question, by his answer to which he might render himself liable to a criminal prosecution.

Witness to be allowed expenses.

Penalty for refusing to give evidence.

Proviso.

Penalty for obstructing officers in the execution of their duty.

3. Every person who wilfully impedes any such officer or person in the execution of his duty, whether on board any ship or elsewhere, shall incur a penalty not exceeding forty dollars, and may be seized and detained by such officer or person, or by any person whom he

may call to his assistance, until such offender can be conveniently taken before some Justice of the Peace or other officer having proper jurisdiction.

Officer to report to the Minister of Marine and Fisheries.

4. Upon the conclusion of any such inquiry the officer or person who made the same shall send to the Minister of Marine and Fisheries for the information of the Governor-General in Council, a report containing a full statement of the case, and of his opinion thereon, accompanied by such report of or extracts from the evidence and such observations, if any, as he may think fit.

Formal Investigations in certain cases.

5. If it appears to the Governor in Council in any such case as aforesaid, either upon or without any such Preliminary Inquiry as aforesaid, or in any case of a charge of misconduct or incapacity brought by any person against any master or mate of any ship, that a Formal Investigation is requisite or expedient, the Governor in Council may nominate and appoint any competent person or persons to be a Court or Tribunal for the purpose of such Investigation, and such person or persons shall thereupon be such Court or Tribunal accordingly.

Powers of Court or Tribunal making Investigation.

6. Such Court or Tribunal shall have the power of summoning before them any persons, and of requiring them to give evidence on oath, orally or in writing (or on solemn affirmation, if they be parties entitled to affirm in civil matters), and to produce such documents and things as such Court or Tribunal may deem requisite to the full investigation of the matters into which they are appointed to examine; and such Court or Tribunal shall have the same power to enforce the attendance of witnesses and to compel them to give evidence, as is vested in any Court of law in civil cases; and any wilfully false statement made by any such witness on oath or solemn affirmation, shall be a misdemeanor punishable in the same manner as wilful and corrupt perjury; but no such witness shall be compelled to answer any question by his answer to which he might render himself liable to a criminal prosecution; and the proceedings of such Court shall be assimilated as far as possible to those of ordinary Courts of Justice with the like publicity.

Proviso.

Section 242 of Imperial Act, 17 and 18 Vict., c. 104 recited.

7. And whereas it is enacted by the two hundred and forty-second section of the Act of the Imperial Parliament, passed in the session thereof held in the seventeenth and eighteenth years of Her Majesty's reign, chapter one hundred and four, intituled: *An Act to Amend and Consolidate the Acts relating to Merchant Shipping*, that the Board of Trade may suspend or cancel the Certificate (whether of Competency or Service), of any master or mate of the Merchant Service, in certain cases, one of which cases, set forth in sub-section five of the said section, is as follows:—"If, upon any Investigation made by any Court or Tribunal authorized, or hereafter to be authorized by the Legislative authority of any British possession, to make inquiry into charges of incompetency or misconduct on the part of masters or mates of ships or as to shipwrecks

or other casualties affecting ships, a report is made by such Court or Tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of, or serious damage to any ship, or loss of life, has been caused by his wrongful act or default, and such Report is confirmed by the Governor or person administering the Government of such possession;" and whereas it is further in effect enacted by the twenty-third section of the Act of the Imperial Parliament, passed in the session thereof held in the twenty-fifth and twenty-sixth years of Her Majesty's reign, chapter sixty-three, that the power of cancelling or suspending the certificate of a master or mate conferred by the above cited two hundred and forty-second section on the Board of Trade, shall in future vest in and be exercised by this Court or Tribunal by which the case is investigated or tried: Be it hereby further enacted, that such Court or Tribunal authorized to be appointed by this Act, shall be held to be in all respects a Court or Tribunal under the hereinbefore cited sub-section of the Imperial Act hereinbefore first cited.

Section 23 of Imperial Act, 25 and 26 Vict., c. 63 recited.

Such a Court to be a Court under said Imperial Acts.

Members to take oath of office.

8. Every member of such Court or Tribunal so appointed as aforesaid, before entering upon his duties as such, shall take and subscribe an oath before one of Her Majesty's Justices of the Peace, well, faithfully, and impartially, to execute the duties assigned to him by this Act.

Report to Governor.

Decision as to cancelling certificates to be stated in open Court.

9. Upon the conclusion of every such Investigation, or as soon afterwards as possible, the Court or Tribunal shall send to the Minister of Marine and Fisheries a full report upon the case investigated, together with the evidence, and their judgment and opinion thereon, and such observations, if any, as the Court or Tribunal may think fit to make, and shall state in open Court the decision to which they have come with respect to cancelling or suspending any certificate, and every such decision, as well as every judgment of any such Court or Tribunal upon any case investigated, shall be subject to be confirmed or set aside by the Minister of Marine and Fisheries, whose decision and judgment thereon shall be final.

Masters or mates may be required to deliver up certificates to be held until close of Investigation.

10. Any such Court or Tribunal may, if they think proper, require any master or mate possessing a Certificate of Competency or Service, whose conduct is called in question, or appears to them to be likely to be called in question in the course of any Investigation before them, to deliver such certificate to them, and they shall hold the certificate so delivered until the conclusion of the Investigation, and shall then forward the same to the Minister of Marine and Fisheries; and if any master or mate fails so to deliver his certificate when so required, he shall incur a penalty not exceeding two hundred dollars.

Expenses how to be defrayed.

11. The Governor in Council may from time to time by warrant, order and direct that any expenses incurred, or to be incurred under the provisions of this Act be defrayed out of any moneys appro-

priated by Parliament for that purpose, or for the purpose of defraying unforeseen expenses.

12. The following Acts and parts of an Act are hereby repealed, namely, the Act passed by the Legislature of the late province of Canada, in the session thereof held in the twenty-seventh and twenty-eighth years of Her Majesty's reign, chapter fourteen, *respecting Investigations into shipwrecks;* and the first, second, third, and sixth sections of the Act of the same Legislature passed in the session thereof held in the twenty-ninth and thirtieth years of Her Majesty's reign, chapter fifty-eight, *to extend the powers of the Trinity House of Quebec;* and chapter seventy-six of the Revised Statutes of Nova Scotia (third series) *Of Marine Courts of Inquiry*, is also repealed.

Repeal of Acts.

Canada, 27 & 28 Vict., c. 14 & 29 & 30 Vict., c. 58, ss. 1, 2, 3, and 6.

R. S. of N. S., c. 76.

13. Nothing in this Act contained shall be taken to affect in any way the jurisdiction of any Vice-Admiralty Court in Canada, however the same may be acquired.

Saving of jurisdiction of Courts of Vice-Admiralty.

14. In the construction and for the purposes of this Act, the word "ship" shall include every description of vessel used in navigation, not propelled by oars.

Interpretation.

CANADA.

36 Vict., Chap. 55.

An Act respecting Wreck and Salvage.

[*Assented to 23rd May*, 1873.]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Preamble.

1. This Act may be cited for all purposes as "The Wreck and Salvage Act, 1873."

Short Title.

2. This Act shall come into operation upon, from, and after the first day of January, one thousand eight hundred and seventy-four.

Commencement.

3. In this Act—

The term "the Minister," means the Minister of Marine and Fisheries;

Definitions.

The word "Master," includes every person having command or charge of any vessel;

The word "Vessel," includes every description of vessel used in navigation;

* * * * * *

Appointment of Receivers of Wreck.

4. The Minister of Marine and Fisheries shall, throughout Canada, have the general superintendence of all matters relating to wreck, and to shipping casualties; and the Governor may, from time to time, appoint any officer of customs, or, where it appears to him to be more convenient, any other person to be a Receiver of Wreck (in this Act referred to as Receiver); and may, from time to

[Note.—The figures under the marginal notes refer to provisions in Imperial Acts on like matters]

Appointment of Receivers of Wreck.

time, remove any Receiver; and may, from time to time, by Order in Council, establish, alter, or abolish districts for the purposes of this Act, and assign a district to any Receiver, and may vary such district from time to time; and may from time to time make and vary regulations for the conduct of Receivers, subject to the provisions of this Act. And if, at any time, there be not any Receiver appointed for any district in which the City of Quebec, or the City of Halifax, or the City of St. John is included, then the agent of the Department of Marine and Fisheries at such City shall be the Receiver for such district; and if, at any time, there be not any Receiver appointed for any other district, then the principal Officer of Customs at the principal port in such district shall be the Receiver for such district.

17 & 18 Vict., c. 104, s. 489.

Receivers *ex officio* where none especially appointed.

A Receiver acting in execution of his duties, in pursuance of this Act, shall have all the same powers and authorities as a principal Officer of Customs or other person acting or appointed under the "*Act respecting Inquiries and Investigations into Shipwrecks and other matters*," passed in the session held in the thirty-second and thirty-third years of Her Majesty's reign, chapter thirty-eight; and any person wilfully impeding a Receiver in the execution of his duty or making default in appearing or giving evidence before him, shall be subject to the like penalties as if the Receiver were a principal Officer of Customs or other person acting or appointed under the said Act.

Powers of Receivers as to inquiries under 32 & 33 Vict., c. 38.

* * * * * *

CANADA.

37 Vict., Chap. 27.

An Act to extend certain Acts therein mentioned to the Province of Prince Edward Island.

[*Assented to 26th May*, 1874.]

Preamble.

Whereas is is expedient to extend certain Acts hereinafter mentioned to the Province of Prince Edward Island: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Acts mentioned in Schedule A extended to Prince Edward Island, subject to certain limitations.

1. Subject to the exceptions and limitations in the following sections of this Act, such of the enactments and provisions contained in the several Acts mentioned in the Schedule A hereunto annexed, as apply equally to all the Provinces to which the said Acts respectively extend at the time of the passing of this Act, and are not limited to any one or more of the said Provinces in particular, or to any territorial division in any one or more of them, shall upon, from and after the first day of July next after the passing of this Act extend and apply to, and shall have the same force and effect in and in relation to the Province of Prince

Edward Island as they then have respectively in and in relation to the other provinces to which they now extend and apply; and as if the said Province of Prince Edward Island were expressly named or referred to in the said Acts wherever such other provinces are mentioned or referred to therein:

* * * * * *

3. Provided always, that the Governor may, by Order in Council published in the Canada Gazette, postpone or suspend the coming into force of any Act mentioned in Schedule A, or of any provision thereof, and may postpone or suspend the repeal of any Act mentioned in Schedule B, or of any part thereof until such time later than the first day of July, in the year one thousand eight hundred and seventy-four, as he may deem expedient, and the said postponement or repeal shall take effect as if made in this Act.

Proviso, certain powers given to Governor in Council as to the Acts mentioned in Schedules A and B.

* * * * * *

SCHEDULE A.

Acts of the Parliament of Canada extended to the Province of Prince Edward Island.

* * * * * *

3. 32-33 Victoria, chapter 38, intituled, "An Act respecting Inquiries and Investigations into Shipwrecks, and other matters." (*See* CANADA.)

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CANADA.

37 VICT., CHAP. 29.

An Act for the Removal of Obstructions, by Wreck and like Causes, in Navigable Waters of Canada, and other Purposes relative to Wrecks.

[*Assented to 26th May*, 1874.]

WHEREAS it frequently happens that the navigation of the rivers and other waters of the Dominion, is obstructed by wrecks and other obstacles hereinafter mentioned; for remedy thereof, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Preamble

* * * * * *

4. The Minister of Marine and Fisheries may appoint any officer of the Government of Canada by his name or title of office, and, without otherwise naming or designating him, to make the enquiry mentioned in the first four sections of the Act passed in the Session held in the thirty-second and thirty-third years of Her Majesty's reign, and intituled "*An Act respecting Inquiries and Investigations into Shipwrecks and other matters*," and such officer shall then have and perform all the powers and duties assigned by the said Act to any principal officer of Customs or other person appointed for the

The Minister may appoint a person to make the enquiry, in case of wreck, &c., instead of Collector of Customs under 32 & 33 Vict., c. 38.

Governor in Council may appoint Court of Investigation, for purposes of said Act.

like purpose by the said Minister under the first section of the said Act, and the Governor in Council may appoint any officer or officers of the Government of Canada, or any body corporate, commissioner or commissioners, constituted for any public purpose, subject to the legislative authority of the Parliament of Canada, by his, their, or its name or names, or title or titles of office, or corporate name, to be a Court or Tribunal under and for the purposes of the fifth and sixth following sections of the said Act, and such officer or officers, or body corporate, commissioner or commissioners, shall then have and perform all the powers and duties assigned by the said Act to any such Court or Tribunal constituted under it.

* * * * * *

CAPE OF GOOD HOPE.

[Act No. 13, 1855.]

An Act for the appointment of Shipping Masters, and for other purposes relating to the "Merchant Shipping Act, 1854."

Preamble.

Whereas, by an Act of the Imperial Parliament, to wit, the "Merchant Shipping Act, 1854," it is among other things enacted, that, "If the Governor-General of India in Council, or the respective legislative authorities in any British possession abroad, by any Acts, Ordinances, or other appropriate legal means, apply or adopt any of the provisions in the third part of this Act contained, to any British ships registered at, trading with, or being at any place within their respective jurisdictions, and to the owners, masters, mates, and crews thereof, such provisions, when so applied and adapted as aforesaid, and as long as they remain in force, shall, in respect of the ships and persons to which the same are applied, be enforced, and penalties and punishments for the breach thereof shall be recovered and inflicted, throughout Her Majesty's dominions, in the same manner as if such provisions had been hereby so adopted and applied, and such penalties and punishments had been hereby expressly imposed:"

And whereas it is expedient to apply and adapt to this colony certain provisions of the third part of the said Act to British ships registered at, or being within the limits of this Colony, and to the owners, masters, mates, and crews of such ships: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

* * * * * *

What tribunals, or persons to perform in this Colony, certain duties mentioned in

XVII. Whereas it is enacted by the two hundred and forty-second section of the aforesaid Act, and in the second schedule to this Act annexed, that the Board of Trade may suspend or cancel the Certificate (whether of Competency or Service) of any master or

mate, in certain cases, one of which cases, set forth in paragraph 5 of the said section, is as follows: "If upon any Investigation made by any Court or Tribunal, authorized or hereafter to be authorized, by the legislative authority in any British possession to make Inquiry into charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such Court or Tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of, or serious damage to any ship, or loss of life has been caused by his wrongful act or default, and such report is confirmed by the Governor or person administering the Government of such possession." And whereas it is expedient to authorize Courts or Tribunals in this Colony, for the purposes stated in the said recited section: Be it hereby further enacted that any of the Courts of Resident Magistrate in this Colony shall be authorized to make the Inquiries into all the matters, and for the purposes set forth in the said section; and further, that it shall be lawful for the Governor, upon any occasion which he may see fit, to nominate and appoint any other person or persons whatever to be a Court or Tribunal duly authorized to make Inquiry into the several matters and this set forth in the aforesaid recited section.

the 242nd section of the "Merchant Shipping Act, 1854."

* * * * * *

XX. This Act may be cited for all purposes as the "Local Merchant Seaman's Act, 1855."

This Act, how to be cited.

XXI. In the construction of this Act, the word "Governor" shall signify the person who for the time being, shall be lawfully administering the Government of this Colony, and the words "master," "seaman" and "ship," shall respectively have the meaning given to them in and by the Imperial Act aforesaid; and words importing the singular number shall include the plural number, and words importing the plural number shall import the singular number, unless, in any such case, there shall be something in the subject or context repugnant to such construction.

Construction of terms.

XXII. This Act shall commence and take effect from and after the promulgation thereof.

Act, when to commence.

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Schedule of quotations from the Imperial Merchant Shipping Act, 1854, *referred to in the Local Merchant Seaman's Act,* 1855.

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242. The Board of Trade may suspend or cancel the Certificate (whether of Competency or Service) of any master or mate in the following cases, that is to say:—

(1.) If upon any investigation made, in pursuance of the last preceding section, he is reported to be incompetent, or to have been guilty of any gross act of misconduct, drunkenness, or tyranny.

(2.) If upon any investigation, conducted under the provisions contained in the eighth part of this Act, or upon any investigation made by a Naval Court, constituted as hereinafter mentioned, it is reported that the loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by his wrongful act or default.

(3.) If he is superseded by the order of any Admiralty Court, or of any Naval Court, constituted as hereinafter mentioned.

(4.) If he is shown to have been convicted of any offence.

(5.) If upon any investigation made by any Court or Tribunal authorised, or hereafter to be authorised, by the legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters and mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such Court or Tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of, or serious damage to any ship, or loss of life, has been caused by his wrongful act or default, and such report is confirmed by the Governor or person administering the Government of such possession.

And every master or mate whose certificate is cancelled or suspended shall deliver it to the Board of Trade, or as it directs, and in default shall for each offence incur a penalty not exceeding fifty pounds ; and the Board of Trade may at any subsequent time grant to any person whose certificate has been cancelled a new certificate of the same, or of any lower grade.

* * * * * *

Given at Government House, this 8th day of June, 1855.

By Command of His Excellency the Governor,

(Signed) RAWSON W. RAWSON,

Colonial Secretary.

CAPE OF GOOD HOPE.

[ACT No. 3, OF 1863.]

Analysis.

Preamble :

1. Powers of cancelling or suspending certificates of masters or mates vested in local Courts.

2. Sentence of suspension or cancellation of certificate, and proceedings thereupon. Power of Governor to direct reconsideration of decision. Report to be made to Board of Trade.

3. Statement of the case to be furnished to owner of certificate twenty-four hours before commencement of Inquiry.

4. Certificate to be delivered to the Court. Penalty for default.
4. Short title of Act.

Act to amend the Act No. 13 *of* 1835, *entitled "An Act for the appointment of Shipping Masters, and for other purposes, relating to the 'Merchant Shipping Act,* 1854.' "

Preamble.

WHEREAS the provisions of the Act of the Imperial Parliament, to wit, the "Merchant Shipping Act, 1854," as contained in the two hundred and forty-second section thereof, have, in certain respects, been altered and amended; and whereas it is expedient to amend the Act of the Colonial Parliament, to wit, the Act No. 13, 1855, entitled "An Act for the appointment of Shipping Masters, and for other purposes relating to the 'Merchant Shipping Act, 1854,'" so that the same shall correspond with the alterations and amendmends in the Imperial Act above-mentioned: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Powers of cancelling or suspending certificates of masters or mates vested in local Courts.

I. The powers of cancelling or suspending the certificate of a master or mate by the two hundred and forty-second section of the Act of the Imperial Parliament, entitled the "Merchant Shipping Act, 1854," conferred on the Board of Trade, shall vest in and be exercised by the Court or Tribunal duly authorized by the seventeenth section of the Act No. 13, 1855, of the Colonial Parliament, entitled an "Act for the appointment of Shipping Masters, and for other purposes relating to the 'Merchant Shipping Act, 1854,'" to make inquiry into the several matters, and things recited in the said last-mentioned section of the said Act of the Colonial Parliament.

Sentence of suspension or cancellation of certificate and proceedings thereupon.

II. Every such Court or Tribunal shall, at the conclusion of the case, or as soon after as possible, state, in open Court, the decision to which it may have come *with respect to cancelling or suspending certificates* (a), and shall, with all convenient despatch, transmit the proceedings in such Inquiry, together with their decision, to the Governor; and no such decision shall take effect unless it be confirmed by the Governor, who may, if he shall think fit, direct such Court or Tribunal to take further evidence, or to re-consider such decision; and such Court or Tribunal shall, in all cases, send a full report upon the case, with the evidence, to the Board of Trade, and shall also, if it determine to cancel or suspend any certificate, forward such certificate, or any directions it may have given in reference thereto, to the Board of Trade, with their report, so that the said Board may exercise the powers conferred by paragraph four, section twenty-three, of 25th and 26th Victoria, chapter sixty-three.

Power of Governor to direct reconsideration of decision.

Report to be made to Board of Trade.

(a) Repealed by s. 5, of Act No. 13, of 1874.

Statement of the case to be furnished to owner of certificate twenty-four hours before commencement of Inquiry.

III. No certificate shall be cancelled or suspended unless a copy of the report, or statement of the case upon which the Investigation is ordered, has been furnished to the owner of the certificate at least twenty-four hours before the commencement of the investigation.

Certificate to be delivered to the Court.

IV. Every master or mate whose certificate is or is to be suspended or cancelled in pursuance of this Act, shall, upon demand, deliver his certificate to such Court or Tribunal by which the case is investigated or tried, or, if not demanded by such Court or Tribunal, to the Board of Trade, or as such Court or Tribunal may direct, in writing, and in default shall, for each offence, incur a penalty not exceeding fifty pounds.

Penalty for default.

Short title of Act.

V. This Act may be cited as the "Local Merchant Seamen's Amendment Act, 1863," and shall be construed with and as part of the "Local Merchant Seamen's Act, 1855."

Given at Government House, Cape Town, this 28th day of July, 1863.

By Command of His Excellency the Governor,

(Signed) RAWSON W. RAWSON,

Colonial Secretary.

CAPE OF GOOD HOPE.

[ACT No. 13 OF 1874.]

Analysis.

Preamble:

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4. Powers of cancelling or suspending certificates of masters or mates of vessels extended to engineers.

5. Second section of Merchant Seamen's Act, 1863, amended.

* * * * * *

8. Short title.

Act to amend the law relating to Merchant Shipping.

[*Assented to 29th July*, 1874.]

Preamble.

WHEREAS in an Act of the Imperial Parliament, to wit, the Merchant Shipping Act, 1873, certain provisions are contained respecting unseaworthy ships, and it is desirable to apply and adapt the said provisions to certain ships in this Colony, and to amend in certain respects the Local Merchant Seamen's Acts, 1855 and 1863, and the Act 16 of 1857, intituled "An Act to consolidate the laws relating to Quarantine and Port Regulations:" Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

* * * * * *

Powers of suspending certificates of masters

IV. The Court or Tribunal in this Colony by law vested with the power of cancelling or suspending the certificate of a master or

mate is also hereby vested with the like power of cancelling or suspending the certificates of engineers of steamships in the same manner as if "certificated engineer" or "certificated engineers" were inserted throughout after "master" or "masters" in the two hundred and forty-second section of the Imperial "Merchant Shipping Act, 1854," and in the "Local Merchant Seamen's Amendment Act, 1863."

or mates extended to engineers.

V. The second section of the "Local Merchant Seamen's Amendment Act, 1863," shall be read and construed as if the words "with respect to cancelling or suspending certificates" in the commencement thereof were omitted.

Second section of Merchant Seamen's Amendment Act, 1863, amended.

* * * * * *

VIII. This Act may for all purposes be cited as the "Local Merchant Shipping Act, 1874."

Short title.

CEYLON.

ORDINANCE ENACTED BY THE GOVERNOR OF CEYLON, WITH THE ADVICE AND CONSENT OF THE LEGISLATIVE COUNCIL THEREOF.

No. 5. 1861.

CHARLES JUSTIN MACCARTHY.

An Ordinance relating to Wrecks, Sea Casualties, and Salvage.

WHEREAS it is expedient more effectually to provide for wrecks, sea casualties, and salvage within the limits of Ceylon. It is therefore enacted by the Governor of Ceylon, with the advice and consent of the Legislative Council thereof, as follows:—

Preamble.

1. In the construction, and for the purposes of this Ordinance (if not inconsistent with the context or subject-matter), the following terms shall have the respective meanings hereinafter assigned to them, that is to say:—

Interpretation of terms.

"Receiver" shall mean any person appointed in pursuance of this Ordinance, Receiver of Wrecks:

"Master" shall include every person (except a pilot) having command or charge of any ship:

"Person" shall include body corporate:

"Ship" shall include every description of vessel used in navigation not propelled by oars:

"Wreck" shall include jetsam, flotsam, lagan, and derelict found in or on the shores of the sea or any tidal water.

Appointment of Superintendent of Wrecks and Receivers.

2. The principal Collector of Customs shall, throughout Ceylon, have the general superintendence of all matters relating to Wrecks; and it shall be lawful for the Governor to appoint any Officer of Customs, or any other person to be a Receiver of Wreck in any district, and to perform such duties as are hereinafter mentioned,

Principal Collector of Customs to be Superintendent of Wrecks, and Governor to appoint Receivers.

and due notice of every such appointment shall be published in the Government Gazette.

Inquiries into Wrecks.

3, 4, 5, 6. Repealed by Ordinance, No. 4, 1863.

* * * * * *

Commencement of Ordinance.

34. This Ordinance shall come into operation from the date of the passing thereof.

Passed in Council the second day of October, one thousand eight hundred and sixty-one.

J. BAILEY, *Clerk to the Council.*

Assented to by His Excellency the Governor, the seventh day of October, one thousand eight hundred and sixty-one, and published by his order.

W. C. GIBSON, *Colonial Secretary.*

CEYLON.

ORDINANCE ENACTED BY THE GOVERNOR OF CEYLON, WITH THE ADVICE AND CONSENT OF THE LEGISLATIVE COUNCIL THEREOF.

No. 4, 1863.

CHARLES JUSTIN MACCARTHY.

An Ordinance to Authorise District Courts to Institute Inquiries into Wrecks.

Preamble.

WHEREAS it is expedient to authorise District Courts to exercise the powers set out in certain Acts of the Imperial Parliament, to wit, "The Merchant Shipping Act, 1854" (section 242), and "The Merchant Shipping Act Amendment Act, 1862" (sections 23 and 24), and, with this view, to modify some of the provisions in the Ordinance No. 5 of 1861, entitled, "An Ordinance relating to Wrecks, Sea Casualties and Salvage."

It is enacted by the Governor of Ceylon, with the advice and consent of the Legislative Council thereof, as follows :—

Repeal of 3rd, 4th, 5th, and 6th sections of Ordinance 4 of 1861.

1. The 3rd, 4th, 5th, and 6th sections of the Ordinance No. 5 of 1861, are repealed.

Inquiries to be instituted in cases of wreck and casualty.

2. In any of the cases following (that is to say) :

Whenever any ship is lost, abandoned, or materially damaged on or near the coasts of Ceylon;

Whenever any ship causes loss, or material damage to any other ship on or near such coasts;

Whenever by reason of any casualty happening to or on board of any ship on or near such coast, loss of life ensues;

Whenever any such loss, abandonment, damage or casualty, happens elsewhere, and any competent witnesses thereof arrive, or are found at any place in Ceylon;

It shall be lawful for the Receiver of Wrecks residing at or nearest

to the place where such loss, abandonment, damage or casualty occurred, if the same occurred on or near the coasts of Ceylon, but if elsewhere, at or near the place where such witnesses as aforesaid arrive, or are found, or can be conveniently examined, or for any other person appointed for that purpose by the Governor, to make enquiry respecting such loss, abandonment, damage or casualty.

Formal investigation before Justice.

3. If it appears to such officer or person as aforesaid, either upon or without any such Inquiry as aforesaid, that a further investigation is expedient, or if the principal Collector of Customs so directs, he shall apply to any District Judge to hear the case; and such District Judge shall thereupon proceed summarily to hear and try the same, and shall, for that purpose, so far as relates to the summoning of parties, compelling the attendance of witnesses, and the regulation of the proceedings, have the same powers as if the same were a proceeding relating to an offence or cause of complaint over which he has jurisdiction, or as near thereto as circumstances permit; and it shall be the duty of such officer or person as aforesaid, to superintend the management of the case, and to render such assistance to the said Judge as is in his power.

Power to appoint Nautical Assessor.

4. In cases where nautical skill and knowledge are required, the principal Collector of Customs shall have the power, either at the request of such Judge, or at his own discretion, to appoint some person of nautical skill and knowledge, to act as Assessor to such Judge; and such Assessor shall, upon the conclusion of the case, either signify his concurrence in the Report by signing the same, or if he dissents therefrom, shall signify such dissent and his reasons therefor to the principal Collector of Customs. And it shall be lawful for the Governor to allow the Assessor such reasonable compensation for his services as to the Governor shall seem fit.

Remuneration to Assessor.

District Judge may suspend or cancel Certificate.

5. The hearing of the case being concluded, the District Judge may proceed, if need be, to suspend or cancel the certificate of any master, mate, or certificated engineer, and to demand the delivery of the same, as authorized by the 23rd and 24th ([a]) sections of "The Merchant Shipping Act Amendment Act, 1862," conforming in every respect to the directions therein contained.

Report must be submitted to the Governor.

6. The Report to the Board of Trade required by the 23rd section of "The Merchant Shipping Act Amendment Act, 1862," must, in the first instance, be submitted to the Governor for the confirmation ([b]) required by the 242nd section of "The Merchant Shipping Act, 1854."

This Ordinance and No. 5 of 1861 to be taken as one.

7. This Ordinance and the Ordinance No. 5 of 1861 shall be read and construed as if they formed one Ordinance.

([a]) But see "Shipping Casualties Investigations Act," 1879, s. 3.

([b]) See as to confirmation by the Governor, Merchant Shipping (Colonial Inquiries) Act, 1882, s. 7.

SCHEDULE.

SECTIONS OF ACTS ABOVE REFERRED TO.

The Merchant Shipping Act, 1854.

Cl. 242, printed at page 161.

Merchant Shipping Act Amendment Act, 1862.

Cl. 23, printed at page 162.

Cl. 24, printed at page 163, as amended.

Passed in Council, the sixteenth day of September, one thousand eight hundred and sixty-three.

F. B. TEMPLER, *Acting Clerk to the Council.*

Assented to by His Excellency the Governor, the twenty-first day of September, one thousand eight hundred and sixty-three, and published by his order.

W. C. GIBSON, *Colonial Secretary.*

CYPRUS.

HAS NO ACT OR ORDINANCE RESPECTING WRECK INQUIRIES.

DOMINICA.

(*See* LEEWARD ISLANDS.)

FALKLAND ISLANDS.

An Ordinance to provide for the application of the Merchant Shipping Act of 1854, *within the Colony.*

IN THE YEAR 1857.—No. 3.

BY His Excellency Thomas Edward Laws Moore, Esq., Captain in the Royal Navy, Governor and Commander-in-Chief of the Falkland Islands and the Dependencies thereof, with the advice and consent of the Legislative Council thereof:

Preamble. Whereas it is expedient to make provision for the application of the Merchant Shipping Act of 1854, within the Colony, and to enable certain Courts and Officers to perform the duties committed by the said Act to Officers of Customs, Shipping Masters, and others: Be it enacted,

Police Court to have power to inquire. 1. That the Police Court holden before the Chairman and one or more Justices, shall have power to make Inquiry into charges of incompetency or misconduct on the part of any master or mate of a ship; and as to shipwrecks, or other casualties affecting ships; and to make a report to the Governor for the information of the Board of Trade, as prescribed in the two hundred and forty-second section of the said Act.

2. That all the powers, authorities, and duties, committed by the said Act to any Officer of Customs, or any Shipping Master, shall (until there be an Officer of Customs in the Colony) be vested in, and exercised by, the Colonial Secretary; and all provisions, offences, and penalties, relating to the performance or neglect of any Act required by the Merchant Shipping Act to be done before any such Officer of Customs, or Shipping Master, shall extend and be applied to any such Act performed or neglected to be performed before the Colonial Secretary.

Colonial Secretary to perform duties of officers of Customs, &c.

* * * * * *

7. Whereas the delay incident to a previous communication with Her Majesty to know Her Royal pleasure hereupon would be productive of serious inconvenience. Be it therefore enacted, that this Ordinance shall take effect and come into operation from the day of the passing hereof.

Commencement of Ordinance.

L.S. (Signed) THOS. E. L. MOORE, *Governor.*

Passed the Legislative Council this tenth day of December, one thousand eight hundred and fifty-seven.

(Signed) J. R. LONGDEN, *Colonial Secretary.*

Wreck and Salvage Ordinance.

IN THE YEAR 1871.—No. 3.

Clause.

1. Part VIII. of Merchant Shipping Act of 1854 to be applied to this Colony.
2. Powers of the Board of Trade under Part VIII. to be vested in the Governor.
3. * * * * * *
4. Commencement of Ordinance.

By His Excellency Colonel George D'Arcy, Governor and Commander-in-Chief of the Falkland Islands and the Dependencies thereof, with the advice and consent of the Legislative Council thereof, Be it enacted:—

1. That Part VIII. of the Merchant Shipping Act of 1854, concerning wrecks, casualties, and salvage, shall be in force within the Colony so far as the same can be applied, subject to the provisions contained in the following clauses.

Part VIII. of Merchant Shipping Act of 1854 to be applied to this Colony.

2. That all the powers, authorities, and duties committed by the said Part VIII. to the Board of Trade shall in the Colony be vested in and exercised by the Governor.

Powers of the Board of Trade under Part VIII. to be vested in the Governor.

* * * * * *

Commencement of Ordinance.

4. That the Ordinance shall come into operation from the day of the passing thereof.

L.S. (Signed) G. D'ARCY, *Governor.*

Passed the Legislative Council this 22nd day of May, 1871.

(Signed) M. GALLWEY HURST,

Acting Clerk of the Council.

FALKLAND ISLANDS.

BY HIS EXCELLENCY THOMAS KERR, GOVERNOR.

No. 3 of 1882.

An Ordinance to extend to this Colony Certain Acts of Parliament in force in England relating to Merchant Shipping.

BE it enacted by the Governor of the Falkland Islands, and their Dependencies, with the advice and consent of the Legislative Council thereof, as follows :—

1. The Acts of Parliament specified in the schedule hereunto annexed shall be in force in this Colony as far as they can be applied and as local circumstances will permit.

2. The provisions of Ordinance No. 3 of 1857, entitled "An Ordinance to provide for the application of the Merchant Shipping Act of 1854 within the Colony," of No. 3 of 1871, entitled the "Wreck and Salvage Ordinance," of No. 2 of 1873, entitled "An Ordinance to extend to the Colony a certain Act of Parliament," and of No. 2 of 1875, entitled "An Ordinance relating to unseaworthy vessels, and to provide for surveys of vessels in certain cases"—shall continue in force in so far as they are not repugnant to the provisions of the Acts of Parliament specified in the schedule of this Ordinance.

L.S. (Signed) T. KERR, *Governor.*

Passed the Legislative Council this twelfth day of January, one thousand eight hundred and eighty-two.

(Signed) ALAN KERR,

Acting Clerk to the Council.

SCHEDULE.

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An Act to amend "The Merchant Shipping Act, 1854," "The Merchant Shipping Act Amendment Act, 1855," and "The Customs Consolidation Act, 1853." — 25 & 26 Vict., c. 63, 29th June, 1862.

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An Act to Amend the Merchant Shipping Acts and the Passenger Acts. — 35 & 36 Vict., c. 73, 10th August, 1872.

An Act to amend the Merchant Shipping Acts. — 36 & 37 Vict., c. 85, 5th August, 1873.

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An Act to amend the Merchant Shipping Acts. — 39 & 40 Vict., c. 80, 15th August, 1876.

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An Act to provide for the Re-hearing of Investigations into shipping casualties, and to amend the rules as to the mode of holding and procedure at such Investigations. — 42 & 43 Vict., c. 72, 15th August, 1879.

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FIJI.

No. IX., 1882.

An Ordinance (enacted by the Governor of the Colony of Fiji with the Advice and Consent of the Legislative Council thereof) to repeal Ordinance No. III. of 1880, *entitled "An Ordinance to provide for the Appointment of a Marine Board," and to make other Provisions in lieu thereof.*

L.S. G. W. DES VŒUX. 18*th September*, 1882.

BE it enacted by the Governor with the advice and consent of the Legislative Council as follows :—

I. Ordinance No. III. of 1880, entitled "An Ordinance to provide for the Appointment of a Marine Board," is hereby repealed, provided that nothing herein contained shall affect or prejudice any proceedings or things lawfully done and taken by virtue of the said Ordinance. — Repealing Marine Board Ordinance No. III. of 1880.

II. The Governor may nominate and appoint a President and any number of persons, not exceeding five including the President, to be a Board to be called "Fiji Marine Board," and three members of such Board shall be a quorum with equal powers as a full Board to carry out the provisions of this Ordinance, and the Governor in Council may also remove any such President or any members of such Board, and appoint others in their place, and may fix the amount of remuneration to be paid to the members of such Board, and may appoint such clerks and servants as may be necessary to carry out the provisions of this Ordinance. — Appointment of Marine Board.

III. It shall be the duty of the Marine Board :—

Duties of Board.

(1.) To institute Inquiries into all cases of wreck and casualty in or near the waters and coasts of this Colony.

* * * * * *

Board may summon persons to attend enquiries and enforce production of documents.

IV. The Marine Board may by summons under the hand of the President or Chairman of the Board require the attendance of all such persons as they think fit, upon any Inquiry instituted by the Board, and may examine such persons, and enforce the production of all books, papers, log-books, accounts, or other documents relating to any such inquiry, and may administer oaths or require statutory declarations as to the truth of any statement made on examination.

Board may compel production of official log-books, &c., muster crew and summon master to appear.

V. It shall be lawful for the said Board to require the owners, masters, or any of the seamen of any British vessel being within any port or place in the Colony, to produce any official log-books, or other documents relating to such vessel in his or their possession or control, and to require any such master to produce a list of all persons on board his vessel, and to take copies of such official log-books or documents, to muster the crew of any such vessel, to summon the master to appear and give any explanation concerning such vessel, or her crew, or the said official log-books or documents.

Penalty for breach of preceding section.

VI. If upon requisition duly made any person shall refuse or neglect to produce any such official log-book or document as he is herein required to produce, or to allow the same to be inspected or copied as aforesaid, or impede any such muster of a crew as aforesaid, or shall refuse or neglect to give any explanation which he is hereinbefore required to give, or shall knowingly mislead or deceive any person hereinbefore authorised to demand such explanation, he shall for each offence be liable to a penalty not exceeding twenty pounds, recoverable in a summary manner.

Penalty for impeding Board, or members, and officers thereof, refusing to attend, or produce documents, or to take oath, &c.

VII. Any person who shall wilfully impede the Board or any member thereof, or any officer duly deputed by the Board, in the execution of their or his duty, or shall refuse to attend in pursuance of any summons of the Board, or who refuses or neglects to make any answer, or to furnish any return, or to produce any document in his possession or power, or to take any oath, or subscribe any declaration as to the truth of any statements made by him, shall be liable on conviction in a summary manner to a penalty not exceeding twenty pounds, or in default one month's imprisonment.

Board may appoint Inspector or Surveyor.

VIII. The Marine Board may appoint any person to act as an inspector or surveyor, to report to them upon any of the following matters, that is to say: Upon the nature and causes of any accident or damage which any vessel has sustained or caused or is alleged to have sustained or caused, and generally upon any matter in relation to which jurisdiction, authority, or power is by this Ordinance conferred upon the said Board.

General powers of Board.

IX. The Marine Board, or any member thereof, or any surveyor

or inspector deputed to act on behalf of the Board shall have the following powers, in addition to any other powers hereby conferred :—

(1.) They may at all reasonable hours go on board any vessel for the purpose of examining the hull and machinery and making any report thereon required by the Board :

(2.) They may inspect any boats, equipments, or materials on board or belonging to any such vessel to which the provisions of this Ordinance extend :

(3.) They may go on board any vessel, and inspect the same, for the purpose of enquiring into the nature and cause of any accident or damage which such vessel has sustained or caused, or is alleged to have sustained or caused.

* * * * * *

Governor may issue directions to Board to hold enquiry, where there is reason to believe master, engineer, or mate is unfit to discharge duty.

XXXI. If the Governor has reason to believe that any master, certificated engineer, or mate is from incompetency or misconduct unfit to discharge his duties, the Governor may issue directions to the Marine Board to hold an enquiry, and may if he shall think fit appoint any competent person to assist in such enquiry as Assessor, and the said Board shall thereupon hold such enquiry, and shall summon such master, certificated engineer, or mate to appear thereat, and shall give him full opportunity of making a defence either in person or otherwise, and may make such order with respect to the costs of such enquiry as they may deem just.

Where Board may suspend or cancel certificate.

XXXII. The Marine Board may suspend or cancel the certificate whether of competency or service of any master, mate, or engineer in the following cases :—

1. If upon any investigation in pursuance of the last preceding section he is found to be incompetent, or to have been guilty of any gross act of misconduct, drunkenness or tyranny.
2. If upon any investigation conducted under the provisions of this Ordinance, or the provisions contained in the eighth part of the Imperial Act seventeen and eighteen Victoria, chapter one hundred and four, or upon any investigation made by a Naval Court, constituted under the said Act, it is found that the loss or abandonment of or serious damage to any vessel, or loss of life has been caused by his wrongful act or default.
3. If he is suspended by the order of any lawfully constituted Admiralty Court, or of any Naval Court constituted as aforesaid.
4. If he is shown to have been convicted of an indictable offence.
5. If upon any Investigation or Inquiry respecting any shipwreck, collision, or other casualty, or respecting any charge of incompetency or misconduct against any master, mate, or certificated engineer made or held by the

Marine Board (which said Board is hereby declared to be a Court or Tribunal within the meaning of section 242, sub-section 5, of the Imperial statute 17 and 18 Victoria, c. 104, and section 23, sub-section 1, of the Imperial statute of 25 and 26 Victoria, chapter 63), the said Board shall find that the loss, abandonment of, or serious damage to any vessel, or loss of life has been occasioned by the wrongful act or default of such master, mate, or engineer, or that he has been guilty of any gross act of misconduct, drunkenness, or tyranny.

Rules to be observed in cancelling or suspending certificates.

XXXIII. The following rules shall be observed with respect to the cancellation and suspension of certificates, that is to say:—

1. The Marine Board shall at the conclusion of the case or as soon afterwards as possible, state in open Court the decision to which they have come with respect to the cancelling or suspension of any certificate, and shall in all cases send a full report of their decision, together with the evidence given, to the Governor, and (if the certificate suspended or cancelled be one issued by the Board of Trade of the United Kingdom, or be a certificate of the same force granted in a British possession) to the Board of Trade of the United Kingdom also.
2. All such reports shall be signed by the President of the Marine Board, and by all such of the members thereof as may have taken part in the investigation or enquiry. Provided that any dissenting member of the said Board may require his reasons for dissenting to be recorded in writing in the minutes of the Board.
3. The Assessor (if any) appointed by the Governor as aforesaid, shall also sign such report, and if he dissents therefrom shall signify such dissent and the reasons therefor.
4. Any certificate granted by the said Board of Trade, or of the same force granted in a British possession, which shall be cancelled or suspended by the Marine Board, shall be sent by them to the Board of Trade with their report. Save as aforesaid, the Marine Board shall retain every certificate that is cancelled or suspended, and may at any time grant any person, whose certificate has been so retained by them, a new certificate of the same or any lower grade.
5. No certificate shall be cancelled or suspended unless a statement of the case upon which the investigation has been ordered has been furnished to the owner of the certificate before the commencement of the investigation.
6. Except in the case of certificates forwarded to the Board of Trade as aforesaid, it shall be lawful for the Governor, if he thinks that the justice of the case requires it, to order the Marine Board to re-issue and return any certificate

which has been cancelled or suspended by them, or to shorten the time for which it has been so suspended, or to order the Marine Board to issue a new certificate of the same or any lower grade, in place of any certificate which has been so cancelled or suspended.

* * * * * *

XXXVI. All matters for which provision has not been made in this Ordinance, shall be dealt with under the provisions of the Imperial Act, seventeen and eighteen Victoria, chapter one hundred and four, or any Act rendering the same applicable to the particular case.

Imperial Act to apply to penalties not dealt with under this Ordinance.

XXXVII. The term "vessel" in this Ordinance shall include any description of vessel used in navigation and exceeding nine tons measurement. . . .

Interpretation section.

XXXVIII. This Ordinance may be cited as the "Marine Board Ordinance, 1882."

Short title.

Passed in Council this fourteenth day of July, in the year of our Lord one thousand eight hundred and eighty-two.

GIBRALTAR

HAS NO ACT OR ORDINANCE RESPECTING WRECK INQUIRIES.

GOLD COAST

HAS NO ACT OR ORDINANCE RESPECTING WRECK INQUIRIES.

GRENADA.

No. 12.—1881.

An Ordinance enacted by the Governor of the Island of Grenada and its Dependencies by and with the advice and consent of the Legislative Council thereof.

[L. M. S.]

I assent,

26th August, 1881. R. W. HARLEY, *Lt.-Governor.*

To make provisions for Inquiry into the causes of wrecks occurring on the coasts of this Island or its Dependencies.

Title.

WHEREAS no competent Tribunals at present exist by which the causes of wrecks on the coasts of this Island or its Dependencies and the circumstances attending such wrecks may be inquired into and investigated, and it is very desirable that such Tribunal should be established: Be it therefore enacted by the Governor of Grenada, by and with the advice and consent of the Legislative Council thereof, as follows:—

Preamble.

1. This Ordinance may for all purposes be cited as "The Wrecks Inquiry Ordinance, 1881."

Short title.

2. This Ordinance shall come into operation and take effect from and after the date of the proclamation thereof.

Commencement of Ordinance.

Inquiry by Police Magistrate.

3. Whenever any ship is lost, abandoned, or materially damaged on or near the coasts of this Island or its Dependencies, it shall be lawful for the Police Magistrate of the police district in or near which such loss, abandonment, or damage occurred to make Inquiry respecting such loss, abandonment, or damage, and he shall for that purpose have the following power, that is to say:—

Power of Police Magistrate.

1. He may go on board such ship and inspect the same;
2. He may by summons under his hand require the attendance of all such persons as he thinks fit to call before him and examine for such purposes, and may require answers to any inquiries he thinks fit to make;
3. He may require and enforce the production of all books, papers, or documents which he considers important for such purposes;
4. He may administer oaths, or in lieu thereof require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination;

Every person who refuses to attend as a witness when summoned, or who refuses or neglects to make any answer or give any return or to produce any document in his possession or to make or subscribe any declaration required of him under the authority of this Ordinance, shall for each offence incur a penalty not exceeding ten pounds. Upon the conclusion of the case, the said Police Magistrate shall send in his Report thereof to the Governor.

Constitution of a Court for the purposes of this Ordinance.

4. Should it appear to the Governor, on reading such Report, that a more Formal Investigation is requisite or expedient, he shall notify his opinion to such Police Magistrate, who shall thereupon associate with himself two or more persons, to be nominated by the Governor, and shall together with them form a Court for the purpose of hearing the case, and the Court so formed shall proceed to hear and try the same, and shall for that purpose, so far as relates to the examining of parties, compelling the attendance of witnesses, and the conduct and regulation of the proceedings, have and exercise the same power as if the same were a proceeding relating to an offence or cause of complaint upon which a Police Magistrate has power to decide summarily, or as near thereto as circumstances permit. Upon the conclusion of the case, the said Court shall send in a report to the Governor containing a full statement of the case, and of their opinion thereon accompanied by such report of, or extracts from the evidence, and such observations as they may think fit.

Report to the Governor.

Investigation into shipping casualties and misconduct of officers.

5. Where any such Investigation involves or appears likely to involve any question as to the cancelling or suspension of the certicate of a master, mate, or engineer it shall be held with the assistance of an Assessor having experience in the Merchant service: Provided always that whenever it is practicable, the said Court

shall be held with the assistance of two Assessors having experience in the Merchant Service.

Rules as to investigations.

6. The following rules shall be observed with respect to the cancellation and suspension of certificates, that is to say: No certificate shall be cancelled or suspended unless a copy of the report or a statement of the case upon which the Investigation is ordered has been furnished to the owner of the certificate before the commencement of the Investigation, nor in the case of Investigations conducted by a Police Magistrate unless one Assessor having experience in the Merchant Service at least expresses his concurrence in the report.

Court may order costs.

7. The said Court may make such order with respect to the costs of any such Investigation or any portion thereof as they may deem just, such costs shall be paid accordingly and shall be recoverable in the same manner as other costs in summary proceedings before a Police Magistrate.

Penalties how recoverable.

8. All fines and penalties imposed by this Ordinance together with all costs shall be recoverable on complaint of any person before any Police Magistrate.

Passed in Council this tenth day of August, in the year of our Lord one thousand eight hundred and eighty-one.

C. Falconer Anton,
Clerk of Councils.

HONG KONG.

The Merchant Shipping Consolidation Ordinance, 1879.

John Pope Hennessy, C.M.G.,
Governor and Commander-in-Chief.

No. 8 of 1879.

Title.

An Ordinance enacted by the Governor of Hong Kong, with the advice of the Legislative Council thereof, to consolidate and amend the laws relating to Merchant Shipping, the duties of the Harbour Master, the control and management of the waters of the Colony, and the regulation of vessels navigating the same.

[*30th December*, 1879.]

Preamble.

Whereas it is expedient to consolidate and amend the laws relating to merchant shipping, the duties of the Harbour Master, the control and management of the waters of the Colony, and the regulation of all vessels navigating the same; and whereas doubts have arisen as to the applicability of certain sections of "The Merchant Shipping Act, 1854," and the Acts amending the same: Be it enacted by the Governor of Hong Kong, with the advice of the Legislative Council thereof, as follows:—

Preliminary.

Short title.

I. This Ordinance may be cited for all purposes as "The Merchant Shipping Consolidation Ordinance, 1879."

Interpretation clause.

II. In the construction and for the purposes of this Ordinance (if not inconsistent with the context or subject matter) the following terms shall have the respective meanings hereinafter assigned to them, that is to say :—

"Stipendiary Magistrate" shall mean and include the Police Magistrates of the Colony, and the Marine Magistrate;

"Master" shall include every person (except a pilot) having command or charge of any ship;

"Seaman" shall include any person (except masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship;

"Ship" shall include any description of vessel used in navigation not propelled by oars, except Chinese junks or lorchas not propelled by steam.

* * * * * *

The term "Waters of the Colony" shall (except as hereinafter provided) be, for the purposes of this Ordinance, deemed to comprise the waters situate within a radius of one marine league from the shores of the Colony: Provided always that this interpretation shall not be construed to affect waters within such radius in any case such waters are situate within the territorial limits or jurisdiction of the Empire of China.

* * * * * *

Marine Courts and Courts of Survey.

Constitution of Marine Court. See Ordinance 11 of 1860, sec 1.

XIII. It shall be lawful for the Governor, from time to time and whensoever occasion shall arise or require, by warrant under his hand and seal of the Colony, to form a Court, which shall be called "The Marine Court;" and such Court shall consist of not more than five or less than three members, of whom one shall be a Stipendiary Magistrate, and one (or more if possible), a Commissioned Officer in the Royal Navy, and the remainder masters of the mercantile marine, or such persons of nautical engineering, or other special skill or knowledge as the Governor may think fit to appoint: Provided always that where any such Investigation involves or appear likely to involve any question as to the cancelling or suspension of the certificate of a master, mate, or engineer, the Court shall include not less than two members having experience in the Merchant Service.

42 & 43 Vict., c. 72, s. 3, sub-sec. 3.

Unofficial members of Court to be remunerated.

2. Each of the unofficial members of such Court shall be paid, out of the Colonial Treasury, the sum of 5 dollars a day, during each day that the Court shall hold its sitting.

Cases where Inquiries are to be instituted.

3. In any of the following cases, that is to say:—

(*a*.) Whensoever any charge of incompetency or misconduct shall be brought by any person against any master, mate, or engineer of a British ship;

(*b*.) Whenever any ship is lost, abandoned, stranded, or materially damaged on or near the coasts of the Colony;

(*c.*) Whenever any ship causes loss or material damage to any other ship, on or near such coasts;

(*d.*) Whenever by reason of any casualty happening to, or on board of any ship, on or near such coasts, loss of life ensues;

(*e.*) Whenever any such loss, abandonment, stranding, damage, or casualty happens elsewhere, and any competent witnesses thereof, arrive at, or be found at, any place in the said Colony;

(*f.*) Whenever a British ship has been lost, or is supposed to be lost, and any evidence can be obtained in the Colony as to the circumstances under which she proceeded to sea or was last heard of;

Powers of Court.

It shall be lawful for the Court to hear and inquire into any such charge of incompetency or misconduct, and to make inquiry respecting such loss, abandonment, stranding, damage, or casualty, and for such purposes, it shall have the powers given by the first part of "The Merchant Shipping Act, 1854," to Inspectors appointed by the Board of Trade, and the powers given by section 23 of "The Merchant Shipping Act Amendment Act, 1862," and the Court shall be governed by the rules of the said last mentioned section, subject to the further requirements of this Ordinance, or of any Imperial Act or local Ordinance which may be from time to time enacted.

Further powers of Court. See M. S. A. 1854, s. 268.

4. The Court may also exercise the following further powers:—

(*a.*) It may, if unanimous that the safety of the ship or crew, or the interest of the owner, absolutely requires it, supersede the master of any British ship then being within the waters of the Colony, and may appoint another person to act in his stead; but no such appointment shall be made without the consent of the consignee of the ship if within the Colony;

(*b.*) It may discharge any mate, engineer, or seaman from his ship;

(*c.*) It may order the wages of any mate or engineer so discharged, or any part of such wages to be forfeited, and may direct the same to be retained by way of compensation to the owner.

5. Each member of the Court shall either sign the report made on any Investigation under this section, or report to the Governor his reasons for dissent therefrom.

M. S. A. 1862, s. 24. 42 & 43 Vict., c. 72, s. 3, sub-sec. 4.

6. Every master or mate or engineer whose certificate is suspended or cancelled in pursuance of this Ordinance shall, upon demand of the Court, deliver his certificate to the Court, or if it is not demanded by the Court, deliver it to the Governor, or as he directs, and in default shall, for each offence, incur a penalty not exceeding two hundred and fifty dollars; but no certificate shall

be suspended or cancelled until such suspension or cancellation shall have been approved by the Governor (a).

42 & 43 Vict., c. 72, s. 2, sub-sec. 1.

7. Where an Investigation into the conduct of a master, mate, engineer, or into a shipping casualty, has been held under this Ordinance, or any Ordinance amending the same, the Governor may, in any case, and shall, if new and important evidence which could not be produced at the Investigation has been discovered, or if for any other reason there has in his opinion been ground for suspecting a miscarriage of justice, order that the case may be re-heard, either generally or as to any part thereof, and either by the Court by whom it was heard in the first instance, or by the Judge of the Vice-Admiralty Court of this Colony, and the case shall be so re-heard accordingly.

Rules as to procedure, fees, &c. M. S. A. 1876, s. 30.

8. The Governor in Council may, from time to time, make and when made revoke, alter, and add to general rules for carrying into effect the enactments relating to Formal Investigations into shipping casualties, and in particular with respect to the procedure, the parties, the persons allowed to appear, the notice to such parties and person, or to persons affected, and the amount and application of fees: And all such rules while in force shall have effect as if enacted by this Ordinance.

9. Every Formal Investigation into a shipping casualty shall be conducted in such a manner that if a charge is made against any person that person shall have an opportunity of making a defence.

* * * * * *

Court may order payment of costs of Investigation.

13. The Court may make such order with respect to the costs of any Investigation under this section as they think fit, and such costs shall be paid accordingly, and shall be recoverable in the same manner as costs in summary proceeding before any Police Magistrate.

Jurisdiction of the Vice-Admiralty Court not to be affected.

14. Nothing in this section contained shall be deemed to affect in any way the jurisdiction of the Vice-Admiralty Court at Hong Kong.

* * * * * *

General.

* * * * * *

Service of order on master, &c. M. S. A. 1876, s. 35.

XLII. 3. Where any order, notice, statement, or document requires, for the purpose of any provision of this Ordinance, to be served on the master of a ship, the same shall be served where there is no master and the ship is in the Colony, on the owner or one of the owners of the ship, or if there is no owner, on the agent of the ship in the Colony, or where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

(a) But see Merchant Shipping Colonial Inquiries Act, 1882, s. 7.

4. Any such order, notice, statement, or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or in the case of a master by leaving it for him on board the ship with the person being or appearing to be in command of such ship.

5. Any person who obstructs the service of any order, notice, statement, or document on the master of a ship shall incur a penalty not exceeding fifty dollars, and if the owner, agent, or master of the ship is a party or privy to such obstruction he shall be guilty of a misdemeanour.

* * * * * *

General power to the Governor in Council to make regulations.

8. In addition to the powers hereinbefore given, it shall be lawful for the Governor in Council, from time to time, to make, alter, and repeal regulations for the better and more effectual carrying out of the provisions of this Ordinance.

And to impose penalties.

9. In any regulations under this Ordinance, except with reference to quarantine, it shall be lawful for the Governor in Council to impose penalties for the breach thereof, but so nevertheless that the penalty for the breach of any such regulations do not exceed two hundred dollars or six months' imprisonment with or without hard labour.

Provisions as to rules, &c., made by Governor in Council. M. S. A. 1876, s. 38.

10. Where the Governor has power to make any orders, rules, or regulations in Council it shall be lawful for him, from time to time, to make such orders, rules, and regulations in Council, and to revoke, alter, or add to any orders, rules, or regulations so made.

11. All such orders, rules, and regulations shall be published in the *Gazette*.

12. Upon the publication of any such orders, rules, or regulations in the *Gazette* they shall, after the date of such publication, or any later date mentioned in such orders, rules, or regulations, take effect as if they were enacted by the Legislature of this Colony.

* * * * * *

Recovery of penalties and expenses.

15. All offences against this Ordinance, or any regulations made thereunder, except when otherwise provided, may be heard and determined by any Stipendiary Magistrate, and all penalties imposed by and expenses recoverable under this Ordinance, or any regulation made thereunder, except when otherwise provided, may be recovered in a summary way before any Stipendiary Magistrate.

* * * * * *

Abstract of Ordinance to be given to Masters.

Abstract of Ordinance to be given to master of every vessel.

XLIV. An abstract of such portions of this Ordinance as the Governor in Council may direct, shall be delivered to the master of every vessel upon her entering the waters of the Colony; and if before obtaining clearance, the master do not return such abstract to the Harbour Master, he shall pay a fee of one dollar for the same.

JAMAICA.

LAW 21 OF 1873.

A Law to constitute Courts of Inquiry to inquire into certain charges against masters, mates, or certificated engineers of British ships, and into casualties affecting ships.

Preamble reciting the Merchant Shipping Act, 1854, s. 242.

WHEREAS it was enacted by section 242 of the Imperial statute the Merchant Shipping Act, 1854 (17 and 18 Victoria, chapter 104), amongst other things, that "The Board of Trade may suspend or cancel the Certificate (whether of Competency or Service) of any master or mate in the following cases (that is to say):—

(5.) If upon any Investigation made by any Court or Tribunal authorized, or hereafter to be authorized, by the legislative authority in any British possession, to make inquiry into charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such Court or Tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of or serious damage to any ship, or loss of life, has been caused by his wrongful act or default, and such report is confirmed by the Governor or person administering the government of such possession:

"And every master or mate whose certificate is cancelled or suspended shall deliver it to the Board of Trade, or as it directs, and in default shall for each offence incur a penalty not exceeding fifty pounds; and the Board of Trade may at any subsequent time grant to any person whose certificate has been cancelled a new certificate of the same or of any lower grade."

And the Merchant Shipping Act Amendment Act, 1862, s. 23.

And whereas section 23 of the Imperial statute, the Merchant Shipping Act Amendment Act, 1862 (25 and 26 Victoria, chapter 63), enacted amongst other things that "The following rules shall be observed with respect to the cancellation and suspension of certificates, that is to say:—

"(1.) The power of cancelling or suspending the certificate of a master or mate, by the two hundred and forty-second section of the principal Act conferred on the Board of Trade, shall (except in the case provided for by the fourth paragraph of the said section) vest in and be exercised by the Local Marine Board, Magistrates, Naval Court, Admiralty Court, or other Court or Tribunal by which the case is investigated or tried, and shall not in future vest in or be exercised by the Board of Trade:

"(2.) Such power shall extend to cancelling or suspending the certificates of engineers, in the same manner as if 'certificated engineer' or 'certificated engineers' were inserted throughout such section after 'master' or 'masters':

"(3.) Every such Board, Court, or Tribunal shall, at the conclusion of the case, or as soon afterwards as possible, state in open Court the decision to which they may have come with respect to cancelling or suspending certificates, and shall in all cases send a full report upon the case, with the evidence, to the Board of Trade, and shall also, if they determine to cancel or suspend any certificate, forward such certificate to the Board of Trade, with their report:

"(4.) It shall be lawful for the Board of Trade, if they think the justice of the case require it, to re-issue and return any certificate which has been cancelled or suspended, or shorten the time for which it is suspended, or grant a new certificate for the same or any lower grade, in place of any certificate which has been cancelled or suspended.

* * * * * *

"(6.) No certificate shall be cancelled or suspended under this section, unless a copy of the report, or a statement of the case upon which the Investigation is ordered, has been furnished to the owner of the certificate before the commencement of the Investigation, nor in the case of Investigations conducted by Justices or a Stipendiary Magistrate, unless one Assessor at least expresses his concurrence in the report."

And whereas it was enacted by section 24 of the Merchant Shipping Act Amendment Act, 1862, as follows:—"Every master or mate or engineer, whose certificate is or is to be (a) suspended or cancelled in pursuance of this Act, shall, upon demand of the Board, Court, or Tribunal by which the case is Investigated or tried, deliver his certificate to them, or, if it is not demanded by such Board, Court, or Tribunal, shall, upon demand, deliver it to the Board of Trade, or as it directs, and in default shall, for each offence, incur a penalty not exceeding fifty pounds."

And s. 24.

And whereas it has been doubted whether the Tribunal constituted by Law 2 of 1869, can fully exercise the powers of cancelling and suspending certificates under section 23 of the Merchant Shipping Act Amendment Act, 1862, and there is no other Tribunal in Jamaica competent to do so, and it is desirable that a Court of Inquiry should be constituted which can inquire into casualties affecting vessels, and can also without doubt exercise all the powers given by the said recited sections of the Imperial statutes: Be it enacted by the Governor of Jamaica, with the advice and consent of the Legislative Council thereof, as follows:—

Doubts as to powers of Tribunals under Law 2 of 1869.

1. It shall be lawful for the Governor, in his discretion, to appoint a Court of Inquiry under this law, on complaint made to him by any person interested in any British ship, or in the cargo of such

Courts of Inquiry, by whom, and on whose complaint, to be appointed.

(a) But see Shipping Casualties Investigations Act, 1879, s. 3.

ship, or by the consignee of such ship or cargo, or by the master, or by the mate, or certificated engineer, or by one-third of the crew of such ship, that the master, mate, or certificated engineer of any such ship has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of, or serious damage to any ship, or loss of life, has been caused by his wrongful act or default, and that the person so alleged to be in fault is in Jamaica, and, in the case of any such ship which is not registered in Jamaica, that the wrongful act or default took place within the territorial limits of Jamaica. A Court of Inquiry may also be appointed by the Governor without such or any complaint, whenever it appears to him that there ought to be an inquiry as to any alleged wrongful act or default by any master, mate, or certificated engineer of any British ship, or into any shipwreck or other casualty affecting any British ship: Provided that, in the case of ships not registered in Jamaica, the alleged wrongful act or default, shipwreck, or casualty took place within the territorial limits of Jamaica.

When appointed without complaint.

Of whom Courts to consist.

2. The Court of Inquiry shall consist of any District Court Judge, and two nautical persons, to be appointed by the Governor; and the District Court Judge shall be the President of the Court.

Their jurisdiction.

Such Court shall have authority to inquire into any charges of incompetency or misconduct on the part of masters, mates, or certificated engineers of any British ship, and as to any shipwreck, or other casualty affecting any ship, specified in the appointment of such Court, and shall have power to cancel or suspend certificates as provided by the sections of the Imperial statute recited in the preamble.

Power to supply vacancies in Court.

3. In case any member of any Court of Inquiry shall be or become unable or unwilling to act, or shall die, the Governor may appoint another person similarly qualified in his place; and no Court of Inquiry shall lapse by reason of, or be otherwise affected by, the death, absence, or removal of the Governor appointing the same.

Court not to lapse.

Notices to be given to parties complained against.

4. It shall be the duty of the District Court Judge appointed on any such Court of Inquiry to give reasonable notice to every person complained against, of the time and place of the holding of such Court of Inquiry.

Duties of Court:

To inquire;

To conform to the recited statutes;

To report;

To furnish statement of proceedings and reasons;

5. It shall be the duty of the Court of Inquiry to make a full, faithful, and impartial Inquiry into the matters specified in the appointment thereof; and the Court, in cancelling or suspending certificates shall in all respects act in accordance with the provisions of the Imperial statutes which authorize such cancellation or suspension. It shall be the duty of the Court to report to the Governor in writing the result of such Inquiry, and also, when required, to furnish to the Governor a full statement of the proceedings of such Court, and of the reasons leading to the conclusions arrived at or reported.

Powers of Court;

To make rules;

6. Each Court of Inquiry acting under this Law may make such rules for its own guidance, and the conduct and management of

proceedings before it, and the hours, times, and places for its sittings, not inconsistent with its appointment, as it may from time to time think fit, and may from time to time adjourn for such time and to such place as it may think fit, subject only to the terms of its appointment. It shall be lawful for the Court to exclude any particular person or persons from any sitting of the Court, either for the preservation of order, for the due conduct of the Inquiry, or for any other reason.

To adjourn;

To exclude any person;

7. The members of every Court of Inquiry may go on board any ship in respect to which any such Inquiry is held, and may inspect the same, or any part thereof, or any of the machinery, boats, equipment, or articles on board thereof, not unnecessarily detaining or delaying her from proceeding on any voyage.

To inspect ship, its equipage, &c.;

8. The Court of Inquiry under this Law shall have the powers of a Judge of a Circuit Court of this Island to summon witnesses, and to call for the production of books, plans, and documents, and to examine on oath witnesses and parties concerned; and no member of the Court shall be liable to any action or suit for any matter or thing done by him as a member of the Court. All summonses for the attendance of witnesses, or other persons, or the production of documents, may be in the form given in the schedule to this Law, and shall be signed by one of the members of the Court, and oaths may be administered by any one of the members of the Court, or by their clerk.

To summon witnesses, and compel evidence.

Form, &c., of summons.

9. If any person present in Court shall be required to give evidence, and shall without lawful excuse refuse to be sworn, or to give evidence, and if any person shall, at any sitting of the Court, wilfully insult any member of the Court, or any officer of the Court, or shall wilfully interrupt the proceedings of the Court, or otherwise misbehave in Court, it shall be lawful for any constable or other person, by the order of the Court, to take the offender into custody, and detain him till the rising of the Court; and the Court shall be empowered, if it shall think fit, by a warrant signed by the members of the Court, or by a majority of them, to commit any such offender to any prison, with or without hard labour, for any time not exceeding one calendar month, or to impose upon any such offender a fine not exceeding ten pounds, for every such offence, and, in default of payment thereof, to commit the offender to prison for any time not exceeding one calendar month unless the said fine shall be sooner paid.

Summary power to punish for refusing to give evidence;

For contempt of Court, or interruption of proceedings.

10. All persons summoned to attend and give evidence, or to produce books, plans, or documents, at any sitting of any such Court of Inquiry shall be bound to obey the summons served upon them as fully in all respects as witnesses are bound to obey subpœnas issued from a Circuit Court, and shall be entitled to the like expenses as if they had been summoned to attend a Circuit Court on a criminal trial, if the same shall be allowed by the Court of Inquiry,

Duty of parties summoned;

Their expenses how ascertained;

And paid.

who may disallow the whole or any part of such expenses in any case, if they think fit; orders for the payment of such witnesses shall be made, as nearly as may be, as orders are made for the payment of witnesses at a Circuit Court on a criminal trial, and shall be paid at such time and in such manner, as the Governor may direct.

Disobedience to summons;

Or refusing to give evidence;

Or produce books, &c.;

Or insulting the Court, &c.;

Or interrupting its proceedings; penalty, how recoverable.

Every person refusing or omitting, without sufficient cause to attend at the time and place mentioned in the summons served on him, and every person attending but leaving the Court without the permission of the Court, or refusing, without sufficient cause, to be sworn, or to answer, or to answer fully and satisfactorily to the best of his knowledge and belief, all questions put to him by or with the concurrence of the Court, or refusing or omitting without sufficient cause to produce any books, plans, or documents in his possession, or under his control, and mentioned or referred to in the summons served on him, and every person who shall wilfully insult any member or officer of the Court at any sitting of the Court, or shall at the sitting of the Court wilfully interrupt its proceedings, shall be liable to a penalty not exceeding fifty pounds, to be recovered in a summary manner before a District Court Judge, or two Justices of the Peace, who, in default of payment forthwith, may award imprisonment with or without hard labour for any period not exceeding six months: Provided, that no person shall be liable under this section for any offence for which he has been already punished under section 9 of this Law.

Proviso.

False evidence, perjury.

11. Any witness who shall wilfully give false evidence in any such Inquiry, concerning the subject-matter of such Inquiry, shall be guilty of perjury, and be liable to be prosecuted and punished accordingly.

Constable's duties at same Courts.

12. The Governor may direct the Inspector-General to detail constables to attend upon any such Court, to preserve order during the proceedings of the Court, and to perform such other duties as usually pertain to their office when in attendance upon the Supreme or Circuit Courts, and to serve summonses on witnesses, and to perform such ministerial duties as such Court shall direct.

Clerk to Court, his appointment and duties.

13. The Governor may appoint a clerk to attend the sittings of the Court, to record its proceedings, to keep its papers, summon and minute the testimony of witnesses, and generally to perform such duties connected with such Inquiry as the Court shall prescribe, subject to the directions, if any, of the Governor.

Remuneration to members of Court and others;

Payment of expenses.

14. The Governor may direct what remuneration, if any, shall be paid to the members of any Court acting under this Law, or to their clerk, and to any other persons employed in or about any such Court, and may direct payment of any other expenses connected with such Inquiry, or with any proceedings for any penalty under this Law; such sums, so directed to be paid, shall be paid by the Treasurer, out of the ordinary cash balance in the Treasury.

15. The appointment of any Court of Inquiry under this Law shall be published in the Jamaica *Gazette*, and shall take effect from the date of such publication.

Publication of appointment of Court.

16. Law 2 of 1869 is hereby repealed; but such repeal shall not affect the consequences of any act or omission that has already taken place, or any right, liability, or right of procedure, or any proceedings already commenced, in respect of such act or omission.

Law 2 of 1869 repealed.

SCHEDULE.

Schedule

Summons to Witness.

Form of summons.

To A. B. (*name of person summoned and his calling and residence if known*) you are hereby summoned to appear before (*here name the members of the Court*) appointed by the Governor to inquire (*state briefly the subject of Inquiry*) at (*place*) upon the day of , 18 , at o'clock, and to give evidence respecting such Inquiry (*if the person summoned is to produce any documents, add*) and you are required to bring with you (*specify the books, plans, and documents required*). Therefore fail not at your peril.

Given under the hand of member of the Court of Inquiry this day of 18 .

Passed in Council, 10th July, 1873.

J. P. GRANT, *President.*

This impression has been carefully compared by me with the Bill which has passed the Legislative Council, and found by me to be a true and correct printed copy of the said Bill.

(Signed) THOMAS OUGHTON,
Clerk of the Legislative Council.

I assent to this Law, 12th August, 1873.

(Signed) J. P. GRANT, *Governor.*

LABUAN.

HAS NO ACT OR ORDINANCE RESPECTING WRECK INQUIRIES.

LEEWARD ISLANDS.

No. 9 OF 1876.

An Act to make provision for Inquiry into the causes of Wrecks occurring on the coasts of these Islands.

L.S.

I assent,

(Signed) GEORGE BERKLEY, *Governor.*

WHEREAS wrecks from time to time take place on the coasts of these Islands, and at present no competent Tribunals exist by

which the causes of, and circumstances attending such wrecks may be inquired into and investigated; and it is very desirable that such Tribunals shall be established.

Be it therefore enacted by the Governor and General Legislative Council of the Colony of the Leeward Islands as follows:—

Magistrates to hold Inquiry into causes of wrecks, &c.

1. Whenever any ship is lost, abandoned, materially damaged, or stranded on or near the coasts of these Islands;

Whenever any ship causes loss or material damage to any other ship on or near such coasts;

Whenever, by reason of any casualty happening to or on board of any ship on or near such coasts, loss of life ensues; the District Magistrate of the district at or near the place where such loss, damage, or casualty occurred, or at which the master or any part of the crew shall arrive, or any person duly authorized by the Governor on that behalf, shall without delay make inquiry respecting such loss, abandonment, damage, stranding, or other casualty. And he shall, for that purpose, have the following powers, that is to say:—

I. He may go on board such ship and inspect the same.

II. He may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers to any inquiries he thinks fit to make.

III. He may require and enforce the production of all books, papers, or documents, which he considers important for such purpose.

IV. He may administer oaths, or in lieu thereof require every person examined by him to make and subscribe a declaration of the truth of the statements made by such person in his examination.

Penalty for non-attendance of witnesses at such Inquiry.

2. Every person who refuses to attend as a witness when summoned, or who refuses or neglects to make any answer, or give any return, or to produce any document in his possession, or to make or subscribe any declaration required of him under the authority of this Act, shall for each offence incur a penalty not exceeding fifty pounds, or in default of payment thereof imprisonment without hard labour for any term not exceeding six months. And upon the conclusion of the case the said District Magistrate shall send in his report thereof to the Governor.

Magistrate to report.

Governor may order Formal Investigation.

3. Should it appear to the Governor on reading such report that a more Formal Investigation is requisite or expedient, he shall notify his opinion to such District Magistrate who shall thereupon associate with himself a second District Magistrate, if any, and the Registrar of Shipping, if any, and in the absence of either of them, with such person or persons as the Governor may appoint, and shall, together with them or him, as the case may be, form a Court for the purpose of re-hearing the case. And the Court so

formed shall proceed to rehear the same and fully inquire into all the circumstances thereof with the view to a further report thereupon; and shall, for that purpose, so far as relates to the examining of persons, compelling the attendance of witnesses, and the conduct and regulation of the proceedings, have and exercise the same powers as if the same were a proceeding relating to an offence or cause of complaint upon which a District Magistrate has power to decide summarily, or as near thereto as circumstances permit. And upon the conclusion of the case, the said Court shall send in a report to the Governor containing a full statement of the case, and of their opinion thereon, accompanying such report with the evidence taken and such observations as they may think fit.

Assessors.

4. In cases where nautical skill and knowledge are required, the Governor shall have the power, either at the request of such Court, or at his own discretion, to appoint some person of nautical skill and knowledge to act as Assessor to such Court; and such Assessor shall, upon the conclusion of the case, either signify his concurrence in their report by signing the same, or, if he dissents therefrom, shall signify such dissent, and his reasons therefor, to the Governor.

Costs of Investigation.

5. The said Court may make such order with respect to the costs of any such Investigation, or any portion thereof, as they may deem just; and such costs shall be paid accordingly, and shall be recoverable in the same manner as other costs in summary proceedings before a District Magistrate.

Remuneration of Assessor, and payment of clerk hire.

6. It shall be lawful for the Governor in Council, in his discretion, to allow to the Assessor reasonable remuneration for the services performed by him, not exceeding in each case five pounds, and there shall be paid to the District Magistrate or other person holding an Investigation under this Act such sum as he shall show, to the satisfaction of the Governor, to be a reasonable charge for the clerical duties performed by any clerk employed by him in taking down the evidence and making a fair copy thereof, and of the report, and for actual travelling expenses incurred by him; and there shall further be paid to each witness attending any Investigation as aforesaid who may be brought from any island, other than that in which the Investigation is held, or who may be about to depart without the jurisdiction of these Islands, such an allowance as the Governor in Council may deem fair and reasonable, not exceeding, however, the allowance usually made to witnesses summoned to the Supreme Court in civil cases.

Short title.

7. This Act may be cited as "The Wrecks Inquiry Act, 1876."

(Signed) OLIVER NUGENT, *President.*

Passed the General Legislative Council this 19th February, 1876.

(Signed) EDWARD BAYNES, *Clerk.*

Dated at Antigua the twenty-fifth day of April, 1876, in the thirty-ninth year of Her Majesty's reign.

MALTA.

Translation.

ORDINANCE No. 1 OF 1874.

An Ordinance enacted by the Governor of Malta, with the advice and consent of the Council of Government thereof, to make certain provisions for the prevention of accidents at sea, and for the better protection of maritime trade.

Preamble.

WHEREAS it is expedient to make certain provisions for the prevention of accidents at sea, and for the better protection of maritime trade, it is hereby enacted and ordained by His Excellency the Governor, with the advice and consent of the Council of Government, as follows:—

General provisions.

* * * * * *

Definitions of some terms.

Article 3. In this Ordinance, the words "Superintendent of the Ports," includes any other officer instructed by him to carry out any provision of this same Ordinance; the word "master," any other person who has even temporarily the command of a ship; the word "seaman," any member of the crew, or apprentice, after and during his engagement; the word "passenger," any person embarked, with or without the consent of the master, and not engaged as seaman or apprentice; the word "ship" any vessel destined to navigate out of the limits of these islands, even though this be not her ordinary destination: and the words "on board," mean on board a ship as well as in a boat belonging to the same ship.

CHAPTER I.

Of the Survey of Ships before their Departure.

* * * * * *

15. Any person authorized, by a warrant or license issued by the Head of the Government of these Islands in virtue of Ordinance No. II. of 1873, to act as master, or as engineer, on board ships, refusing without just cause, to serve as surveyor, may be suspended by the Court aforesaid from the exercise of his profession, for any period not exceeding six months.

* * * * * *

CHAPTER IV.

Of Wrecks and other Accidents.

Duties of Superintendent of the Ports.

89. In case of any ship being stranded, wrecked, or abandoned on the coasts of these Islands, or at sea within the limits of the territorial jurisdiction of these Islands, or in case of any ship having, within those limits, caused serious damage to another, the Superintendent of the Ports shall make a report thereof to the Court of Judicial Police, which shall make an Inquiry respecting the nature and the cause of the accident, and draw up a *procès-verbal*, annexing thereto the depositions of the witnesses examined.

The Court may appoint surveyors whenever it deems it necessary, and in such case it shall also annex their report to the *procès-verbal.*

The provision of Article 15 shall also apply to this case.

* * * * * *

Delivery of master's certificate or warrant.

91. The Court may, whether before (a) or after the conclusion of the said Inquiry, order any master, mate, or engineer of the said ship, holding a Certificate of Competency or of Service granted to him by any authority in Her Majesty's dominions out of these Islands, or a warrant or license granted by the Head of the Government of these Islands in virtue of the Ordinance referred to in Article 82, to deliver such document to the Court, whenever there is reason to believe that his conduct, in regard to the accident, may be impugned.

92. The certificate, warrant, or license delivered to the Court, shall, on the conclusion of the Inquiry, be restored to the person who held it, whenever it shall not appear, to the satisfaction of the Court, that there is any cause for which such certificate, warrant, or licence might be suspended or cancelled by the competent authority. In any other case, it shall be forwarded by the Court to the head of the Government, with a report.

93. If the master, mate, or engineer, does not immediately carry out the order for the delivery of his certificate, warrant, or license, alleging that he lost it, or that he otherwise ceased to have it in his possession, the Court may order the police to make a search for it, and, if found, to seize and deposit it in Court.

If it shall appear that the master wilfully disobeyed the order aforesaid, the Court may, in the course of the same proceedings, sentence him to imprisonment for a period not exceeding three months, or to pay a *multa* (fine).

Effects of the *procès-verbal* of Inquiry.

94. The *procès-verbal* prescribed in Article 89, may be given in evidence in any proceedings. It shall remain in the Court; which, however, shall direct that a copy be given to the Superintendent of the Ports.

Copies of the *procès-verbal* shall also be given to whomsoever shall apply for them, on payment of a fee at the rate of fourpence for each page of not less than one hundred words.

* * * * * *

Other laws maintained.

99. The provisions of this chapter do not derogate other laws relating to the sea-protest to be made by the master, or to any measure which the master or persons interested are bound, or have a right, to take, in cases of accident.

* * * * * *

Passed the Council of Government at Sitting No. 80, June 3, 1874.

(Signed) F. VELLA,
Clerk to the Council.

(a) But see Shipping Casualties Investigations Act, 1879, sec. 3.

Amended by Special Resolutions passed at Sittings No. 81, of June 10, 1874, and No. 1, December 22, 1875.

(Signed) F. VELLA,
Clerk to the Council.

Assented to this 10th day of January, 1876.

L.S.

(Signed) C. T. VAN STRAUBENZEE,
Governor.

By command,
(Signed) VICTOR HOULTON,
Chief Secretary to Government.

MAURITIUS AND DEPENDENCIES.

ORDINANCE No. 1 OF 1856.

J. M. HIGGINSON.

Enacted by the Governor of Mauritius, with the advice and consent of the Council of Government thereof.

Title. *To constitute a Marine Board for the purpose of Investigating Cases of Wrecks.*

Preamble. WHEREAS it is expedient that a Board of Officers should be appointed to be invested with the power of investigating cases of loss, abandonment or damage to ships, be it therefore enacted by His Excellency the Governor, with the advice and consent of the Council of Government, as follows:—

Art. 1. For the purposes of this Ordinance a Board to be styled the "Marine Board" which is hereby constituted shall be composed as follows:—

1. The Harbour Master;
2. The Agents for Lloyd's in the Island of Mauritius;
3. The Surveyors of the Marine Insurance Offices lawfully established in this Colony;
4. And the President for the time being of the Chamber of Commerce;

The aforesaid Board shall be presided over by the Harbour Master, and any three members thereof, of whom the Harbour Master shall be one, shall form a quorum.

Art. 2. In any of the cases following, that is to say:—

Whenever any ship is lost, abandoned, or materially damaged on or near the coast of this Island or in any roadstead or harbour thereof;

Whenever any ship causes loss or material damage to any other ship on or near such coast;

Whenever by reason of any casualty happening to or on board of any ship on or near such coast loss of life ensues;

Whenever any such loss, abandonment, damage or casualty happens elsewhere and any competent witnesses thereof arrive or are found at any place in this Island of Mauritius;

It shall be lawful for the said Board whenever it shall be of opinion that a Formal Investigation is requisite or expedient, or upon the requisition of the owners, agents, or consignees of the ship, or of the Collector of Customs, or of the Chamber of Commerce of this Island of Mauritius, to make an Inquiry respecting such loss, abandonment, damage, or casualty, and to take down the depositions of all parties who are able to give any information upon the matter. Upon the conclusion of the Inquiry the Board shall send a report to His Excellency the Governor to be forwarded to the Board of Trade, containing a full statement of the case and of the opinion of the Board thereon, accompanied by such report of or extracts from the evidence, and such observations (if any) as the Board may think fit.

Art. 3. The said Board shall for the purposes of this Ordinance have power by summons under the hand of the President thereof to require the attendance of all such persons as it may think fit to call before it to be examined and may require and enforce the production of all books, papers, or documents which it may consider necessary, and it shall have power to examine such persons and require answers or returns to any enquiries it may think fit to make.

It shall have power to administer oaths or may in lieu of administering an oath require every person examined before it to make and subscribe a declaration of the truth of the statements made by him in his examination.

And every person who refuses to attend as a witness before such Board after having been required to do so in the manner hereby directed, or who refuses or neglects to make any answer, or to give any return, or to produce any document in his possession, or to make or subscribe any declarations which such Board is hereby empowered to require, shall for each such offence incur a penalty not exceeding £10.

Art. 4. The present Ordinance shall commence and take effect on and from the 8th day of March, 1856.

Passed in Council, at Port Louis, Island of Mauritius, this 5th day of March, 1856.

R. Y. CUMMINS, *Acting Secretary to the Council.*

Published by order of His Excellency the Governor

J. DOWLAND, *Acting Colonial Secretary.*

NATAL.

No. 17, 1881.

(Signed) EVELYN WOOD, *Major-General, Administrator.*

LAW,

(*enacted by the Administrator of the Government of the Colony of Natal, with the advice and consent of the Legislative Council thereof.*) "*To repeal and re-enact with certain amendments Law No.* 27, 1880, *entituled Law 'To repeal and re-enact with certain amendments, Law No.* 24, 1875,' *entituled Law 'To repeal and re-enact with certain amendments Law No.* 9, 1862,' *entituled Law 'To enable the Lieutenant-Governor of the Colony of Natal to appoint Courts or Tribunals to Inquire into charges of incompetency or misconduct of masters or mates of ships, and to Inquire into shipwrecks or other casualties affecting ships.'*"

Preamble. WHEREAS it is expedient that the law of this Colony relating to Inquiry into charges of incompetency or misconduct of masters or mates or engineers of ships, and to Inquiry into casualties affecting ships, should be brought into harmony with Imperial legislation on the subject.

And whereas it is expedient to repeal and re-enact with certain amendments the Law No. 27, 1880, entituled Law "To repeal and re-enact with certain amendments Law No. 24 of 1875, entituled Law 'To repeal and re-enact with certain amendments Law No. 9, 1862,' entituled Law 'To enable the Lieutenant-Governor of the Colony of Natal to appoint Courts or Tribunals to Inquire into charges of incompetency or misconduct of masters or mates of ships, or to Inquire into shipwrecks or other casualties affecting ships.'"

Be it therefore enacted by the Administrator of the Government of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Repeal of Law 27, 1880. Proviso. 1. The said Law No. 27, of 1880, shall be, and the same is hereby repealed: Provided, however, that this repeal shall not affect the past operation of the said Law, No. 27, 1880, nor anything duly done or suffered under the said Law; nor any penalty, forfeiture, or punishment incurred in respect of any offence committed thereunder; nor any investigation, legal proceedings, or remedy commenced thereunder; and any such investigation, legal proceedings, and remedy may be carried on as if this Law had not been passed.

Appointment of Courts of Resident Magistrates. 2. The Courts of the Resident Magistrates of this Colony are authorized to make inquiries into any charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties affecting ships whenever any ship is lost, abandoned, or materially damaged on or near the coast of Natal; whenever any ship causes loss or material damage to any

other ship on or near such coast; whenever, by reason of any casualty happening to or on board of any ship on or near the coast of Natal, loss of life ensues; whenever any such loss, abandonment, damage, or casualty happens elsewhere, and any ship causing the same may arrive at the Colony of Natal, or when any competent witnesses thereof have arrived or be found in any place in Natal.

Governor may appoint others,

3. It shall be lawful for the Governor, in his discretion, to nominate and appoint any other person or persons, with or without the Resident Magistrate, to be a Court or Tribunal authorized to make inquiry into the several matters and things set forth in the preceding section of this Law.

And may appoint Assessors.

4. In all inquiries conducted under this Law the Governor shall appoint one or more person or persons of nautical, engineering, or other special skill or knowledge to act as Assessors, and to give their opinions to any such Court on any question asked by or upon any fact submitted to him or them by the said Court.

Not less than two Assessors in certain cases.

5. Where any such Investigation involves or appears likely to involve any question as to the cancelling or suspension of the certificate of a master, mate, or engineer, it shall be held with the assistance of not less than two Assessors having experience in the merchant service.

Rules of Resident Magistrates' Courts applicable.

6. All rules, orders, and regulations of Resident Magistrates' Courts are hereby extended to the Courts or Tribunals appointed or to be appointed under this Law, in so far as the same are applicable, and all said Courts shall be open to the public.

Powers vested in Court.

7. The powers of suspending or cancelling the certificate of a master or mate, by the 242nd section of the Act of the Imperial Parliament, to wit, "The Merchant Shipping Act, 1854," conferred on the Board of Trade, shall—except in the case provided for by the fourth paragraph of the said section—pursuant to an Act of the Imperial Parliament, to wit, "The Merchant Shipping Act Amendment Act, 1862," vest in and be exercised by the Court or Tribunal appointed or to be appointed under this Law, and duly authorized to make inquiry into the several matters and things set forth in the second section of this Law.

Further powers.

8. The Court or Tribunal in this Colony by law vested with the power of cancelling or suspending the certificate of a master or mate, is also hereby vested with the like power of cancelling or suspending the certificates of engineers of steamships in the same manner as if "certificated engineer" or "certificated engineers" were inserted throughout after "master" or "masters" in the 242nd section of the Imperial "Merchant Shipping Act, 1854," and in this Law.

Proceedings and judgment.

9. Every such Court or Tribunal shall, at the conclusion of the case, or as soon after as possible, state, in open Court, the decision to which it may have come with respect to cancelling or suspending certificates, or other the subject-matter of the

Inquiry, and shall, with all convenient dispatch, transmit the proceedings in such Inquiry, together with their decision, to the Governor; and such Court or Tribunal shall in all cases send a full report upon the case, with the evidence, to the Board of Trade, and shall also, if it determine to cancel or suspend any certificate, forward such certificate, or any directions it may have given in reference thereto, to the Board of Trade, with its report, so that the said Board may exercise the powers conferred by paragraph four, section twenty-three, of 25th and 26th Victoria, chapter sixty-three: Provided that in all cases where the suspension of any such certificate shall have been for a period not exceeding three months, and the officer whose certificate has been so suspended purposes to remain in the Colony, such certificate shall be transmitted by the Court or Tribunal aforesaid, together with the proceedings in such case or Inquiry, and its decision, to the Governor, in order that the certificate may be returned to such officer as soon as the sentence expires. In all such cases the Governor shall carefully explain, in the report sent under this section to the Board of Trade, the manner in which such certificate has been disposed of.

Proviso.

Copy of document to be furnished to owner of certificate.

10. No certificate shall be suspended or cancelled unless a copy of the report, or a statement of the case upon which the Investigation is ordered, and of the charge to be inquired into, shall have been furnished to the owner of the certificate before the commencement of the Investigation, nor unless the report is confirmed by the Governor (*), nor unless one Assessor at least expresses his concurrence in the report.

Penalty for not delivering certificate.

11. Every master or mate, or engineer whose certificate is suspended or cancelled in pursuance of this Law, shall upon demand deliver his certificate to such Court or Tribunal by which the case is investigated or tried, or, if it is not demanded by such Court or Tribunal, shall upon demand deliver it to the Board of Trade, or as such Court or Tribunal may direct in writing, and in default shall for each offence incur a penalty not exceeding fifty pounds.

Commencement and short title of Law.

12. This Law shall commence and take effect from and after the promulgation thereof in the Natal Government *Gazette*, and may be cited for all purposes as the "Shipping Casualties Law, 1881."

Given at Government House, Natal, this twentieth day of December, 1881.

By command of His Excellency, the Administrator of the Government.

(Signed) C. B. H. Mitchell,
Colonial Secretary.

(*) But see Merchant Shipping (Colonial) Inquiries Act, 1882, s. 7.

NEW BRUNSWICK.

(*See* CANADA.)

NEWFOUNDLAND.

Anno vicesimo-nono Victoriæ Reginæ.

CAP. XIII.

An Act to make Provision for the Constitution of a Marine Court of Inquiry in this Colony.

[*Passed* 1*st May*, 1866.]

Preamble.

WHEREAS it is expedient to make provision for the constitution of a Marine Court of Inquiry in this Colony.

Be it therefore enacted by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:—

Governor to commission five persons as Marine Court of Enquiry.

I. It shall be lawful for the Governor in Council, from time to time, and whenever occasion shall arise or require, by commission under his hand and seal, to appoint five persons to form a Court, called the Marine Court of Inquiry; and such Court shall comprise some person or persons of judicial knowledge and habits, and some person or persons of nautical skill and experience; and in the commission may be indicated the person to preside over the Court. The proceedings of the Court shall be assimilated, as far as possible, to those of ordinary Courts of Justice, with the like publicity.

President.

Form of proceedings.

Jurisdiction "cases."

II. In cases following, that is to say:—

Whenever any ship is lost, abandoned, or materially damaged, on or near the coasts of this Island or its Dependencies:

Whenever any ship causes loss or material damage to any other ship, on or near the coasts of this Island or its Dependencies, or in any roadstead or harbour thereof.

Whenever, by reason of any casualty happening to or on board of any ship on or near the coast of this Island or its Dependencies, or in any roadstead or harbour thereof, loss of life ensues:

Whenever any such loss, abandonment, damage, or casualty happens elsewhere, and any competent witness or witnesses thereof arrive, or are found at any place within this Island or its Dependencies:

Whenever a charge of misconduct or incompetency is brought by any person against a master, mate, or engineer, of a British ship:

It shall be lawful for such Court to hear and inquire, and generally to exercise the powers and perform the duties given and prescribed by the Merchant Shipping Act, 1854, as amended by the Merchant Shipping Act, 1862, or as the same may be after amended; and may also exercise the powers given to Inspectors appointed by the Board of Trade: Provided that the duty of inspection may be performed by any one or more members of such Court, or by one or more competent persons to be appointed by the said Court.

Impeding inspection.

III. Every person wilfully impeding such inspection, or wilfully impeding any person or persons engaged in such inspection, whether

Penalty.

on board ship, or elsewhere, shall incur a penalty not exceeding forty dollars, and may be seized and detained by any such person or persons, or others, who may be called to assist, until such offender can be conveniently taken before some Justice of the Peace; and such penalty shall be recovered, and such offender dealt with, in the same manner, as nearly as applicable, in the case of a person impeding an Inspector under part 1st of the Merchant Shipping Act, 1854.

Power of summoning witnesses, regulating the proceedings, and enforcing penalties.

IV. The said Court shall, so far as relates to the summoning of parties, compelling the attendance of witnesses, the regulation of the proceedings, and the enforcing of penalties, and of obedience to the judgment or orders of the Court, have the same powers as Justices of the Peace would have if the proceedings related to an offence or cause of complaint upon which they had power to make a summary conviction or order, or as near thereto as circumstances permit; and the said Court of Marine Inquiry may exercise the jurisdiction and authority conferred on Justices of the Peace under the third section of this Act.

Governor may appoint persons at other places to make enquiries, &c.

V. It shall be lawful for the Governor in Council, upon any occasion which he may see fit, and at whatever place may be necessary, to nominate and appoint any other person or persons whomsoever, to be a Tribunal duly authorised to make inquiry into the several matters aforesaid, with the like powers as the Court hereinbefore mentioned.

Orders respecting costs.

VI. The Court may make such order, with respect to the costs of any such Investigation, or any portion thereof, as they shall deem just; and such costs shall be paid accordingly, and shall be recoverable, in the same manner as other costs incurred in summary proceedings, before one or more Justices of the Peace.

VII. Repealed by 30 Vict., cap. 8.

Conclusion of case, statement of decision.

Report.

VIII. Upon the conclusion of the case, or as soon afterwards as possible, the Court shall state, in open Court, the decision to which they may have come with respect to cancelling or suspending certificates, and shall in all cases send a full report upon the case, with the evidence, and of the judgment and opinion thereon, and such observations, if any, as the Court may think fit, to the Governor, for transmission to the Board of Trade; and shall also, if they determine to cancel or suspend any certificate, forward such certificate to the Governor for transmission to the Board of Trade, with their report.

Court may demand certificates, &c.

IX. The Court may, if they think proper, require any master, mate, or engineer, possessing a Certificate of Competency or Service, whose conduct is called in question, or appears to them likely to be called in question, in the course of such Investigation, to deliver such certificate to them (a); and, if their report is to cancel or suspend

(a) But see Shipping Casualties Investigations Act, 1879, s. 3.

such certificate, shall forward the same to the Governor, to be transmitted to the Board of Trade; or, if such be not their decision, then such certificate shall be returned; and if any master, mate, or engineer fail to deliver his certificate, when so required, he shall incur a penalty not exceeding two hundred dollars.

X. Repealed by 30 Vict., cap. 8.

XI. Provided always that nothing in this Act contained shall be taken to affect in any way the jurisdiction of the Vice-Admiralty Court of Newfoundland, howsoever the same may be acquired.

Not to affect Admiralty Court.

XII. This Act shall not come into operation until Her Majesty's pleasure shall have been first duly signified thereon.

Suspending clause.

NEWFOUNDLAND.

Anno tricesimo Victoriæ Reginæ.

CAP. VIII.

An Act to amend an Act passed in the twenty-ninth year of the reign of Her present Majesty, entitled "An Act to make Provision for the constitution of a Marine Court of Inquiry in this Colony."

[*Passed 26th April*, 1867.]

WHEREAS it is expedient to amend an Act passed in the twenty-ninth year of the reign of Her present Majesty, entitled "An Act to make Provision for the Constitution of a Marine Court of Inquiry in this Colony."

Preamble.

Be it therefore enacted by the Governor, Legislative Council, and Assembly, in Legislative Session convened, as follows:—

The seventh and tenth sections of an Act passed in the twenty-ninth year of the reign of Her present Majesty, entitled "An Act to make Provision for the Constitution of a Marine Court of Inquiry in this Colony," shall be, and the same are hereby repealed.

7th and 10th sections Marine Court Act, 29 Vict., repealed.

NEW SOUTH WALES.

Anno tricesimo quinto Victoriæ Reginæ.

No. VII.

An Act to incorporate a Board to be called "The Marine Board of New South Wales," to confer certain powers on such Board, to consolidate and amend the Laws relating to the Regulation of Steamships, Pilotage and Pilots, Harbours and Navigable Waters, and Navigation, and to make provision for the Examination of Masters, Mates, and Engineers, and for other purposes.

[*Reserved for the signification thereon, of Her Majesty's pleasure*, 22nd *June*, 1871.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative

Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows (that is to say) :—

* * * * * *

Interpretation clause.

4. Nothing in this Act contained shall apply to any ship belonging to or in the service of Her Majesty. And in the construction and for the purposes of this Act the following terms in inverted commas shall, unless inconsistent with the context or subject-matter, have the respective meanings set against them (that is to say) :—

"Governor"—The Governor with the advice of the Executive Council.

"Jurisdiction"—The navigable waters lying within one nautical league of the coast, and the inland navigable waters of the Colony of New South Wales.

"Ship"—Every description of vessel used in navigation not propelled by oars.

"Foreign-going ship"—Every registered ship employed in trading or going between any port or place within, and any port or place without the jurisdiction.

"Coast-trade ship"—Every registered ship employed in trading or going between any ports or places within the jurisdiction, also every registered steam-tug: Provided that every such ship which shall be employed in trading between any ports of adjacent Colonies shall be deemed to be a coast-trade ship for the purposes of this Act.

"Master"—Every person, except a pilot, having command or charge of any ship.

"Pilot"—Any person not belonging to a ship who has the conduct thereof.

"Qualified Pilot"—Any person duly licensed hereunder to conduct ships to which he does not belong.

"The Australasian Colonies"—New South Wales and its Dependencies, Victoria, Queensland, Tasmania, South Australia, Western Australia, and New Zealand.

"Justice"—Any Justice of the Peace.

"Harbour Master"—Any duly appointed Harbour Master or Assistant Harbour Master. And in places where there is no Harbour Master (*eo nomine*), the pilot stationed at any harbour, river, or place.

"Person" shall include bodies corporate and companies.

Part I.

Incorporation and constitution of Marine Board.

5. It shall be lawful for the Governor by letters patent under the seal of the Colony to incorporate a Board by the name of the "Marine Board of New South Wales," to consist of seven members, that is to say, a president and six Wardens, of which Wardens three may be elected in manner hereinafter prescribed by the owners of

Foreign-going and Coast-trade ships registered in the port of Sydney, and the remainder shall be appointed by the Governor.

* * * * * *

6. The said Marine Board shall have perpetual succession, and a common seal, and shall have power to sue and be sued in the name of the President of such Board, and such seal shall have inscribed thereon the words "Marine Board of New South Wales," together with such device as the Governor may approve, and a notice of the approval of such seal as aforesaid shall be published in the *Gazette*.

Seal of the Marine Board.

7. Any three members of the said Board shall be a quorum.

Three to form a quorum.

* * * * * *

16. It shall be lawful for the Governor to establish Local Marine Boards for carrying into effect the provisions of this Act under the superintendence of the Marine Board of New South Wales, at such seaports and other places within the jurisdiction, as the said Governor may with the recommendation of the said last-mentioned Board direct and appoint. And the chairman and members of such Local Marine Board shall be appointed by the Governor, and all vacancies in such Board shall be filled in like manner. Provided always that the Marine Board of New South Wales shall be the authority to carry into effect the provisions of this Act throughout the jurisdiction wheresoever no Local Marine Board shall have been appointed as herein provided.

Local Marine Boards may be established.

General Powers of Marine Board.

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19. The Marine Board shall, subject as aforesaid, have, and it is hereby invested with full powers to carry out the provisions of this Act relating to Steam Navigation, and shall also be the department to undertake the general superintendence of all matters within its jurisdiction relating to the issue, suspension, and cancellation of Certificates of Competency and Service, * * * and the several matters hereinafter particularly described.

Marine Board to carry out provisions of Part II. of this Act.

What matters within the direction of Marine Board.

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23. The Marine Board may, in cases where there is reason to suspect that the provisions of this Act are not complied with exercise the following powers that is to say :—It shall be lawful for the said Board to require the owner, master, or any of the seamen of any British ship, being within any port or place in the jurisdiction, to produce any official log-books or other documents relating to such seamen or any member thereof in their respective possession or control, and to require any such master to produce a list of all persons on board his ship, and take copies of such official log-books or documents or of any part thereof, to muster the crew of any such ship, to summon the master to appear and give any explanation concerning such ship or her crew or the said official log-books or documents.

Marine Board may inspect documents and muster crews.

Penalty for refusing to produce documents, &c.

24. If upon requisition duly made any person shall refuse or neglect to produce any such official log-book or document, as he is hereinbefore required to produce, or to allow the same to be inspected or copied as aforesaid, or impede any such muster of a crew as aforesaid, or shall refuse or neglect to give any explanation which he is hereinbefore required to give, or shall knowingly mislead or deceive any person hereinbefore authorised to demand any such explanation, he shall for each such offence incur a penalty not exceeding twenty pounds.

Marine Board may appoint inspectors.

25. The Marine Board may appoint any person to act as an inspector to report to them upon any of the following matters, that is to say:—Upon the nature and causes of any accident or damage which any ship has sustained or caused, or is alleged to have sustained or caused; whether the provisions of this Act or any regulations made thereunder have been complied with; and generally, upon any matter whatsoever in relation to which jurisdiction, authority, or power is by this Act conferred upon the said Board.

Appointment and removal of surveyors.

26. The Marine Board may from time to time recommend, for the approval of the Governor, such fit and proper persons to fill respectively the offices of shipwright surveyors and engineer surveyors, under this Act, and at such ports or places as they may think desirable. And the Governor may thereupon appoint such persons to the said offices. And the said Board may in like manner recommend the suspension or removal of any such shipwright or engineer surveyor, and the temporary or permanent appointment of another in his stead.

Powers of members of Marine Board, inspectors, and surveyors.

27. The Marine Board, any Local Marine Board, and every member deputed by the said Marine Board, or Local Board, to act in their behalf, and every inspector and surveyor appointed in pursuance of the provisions of this Act, shall have and exercise the following powers, that is to say:—

(I.) They may at all reasonable times go on board any ship or vessel of what description soever, to which any of the provisions of this Act extend, for the purpose of examining the hull and machinery, and making any report thereon required by the said Board:

(II.) They may inspect any boats, equipments, or materials, on board or belonging to any such ship or vessel to which the provisions of this Act extend:

(III.) They may go on board any such ship or vessel, and inspect the same, for the purpose of inquiring into or reporting upon the nature and causes of any accident or damage which such ship or vessel has sustained or caused, or is alleged to have sustained or caused:

The Marine Board and any Local Marine Board may, by summons under the hand of the President or Chairman thereof, require the attendance of all such persons, as they think fit, upon any Inquiry

authorized by the said Board, and may require answers or returns to any questions, and may require and enforce the production of all books, papers, log-books, accounts, agreements, or other documents relating to any such Inquiry as aforesaid, and may administer oaths or in lieu thereof require any person examined to make and subscribe a statutory declaration of the truth of the statements made in his examination. And any person who shall wilfully impede the Marine Board, any Local Marine Board, or any member or members thereof respectively deputed as aforesaid, or any inspector or surveyor, in the execution of their duty, and all persons aiding or abetting therein may be apprehended and detained by any member, inspector, or surveyor, or by any person called to his assistance, until such offender can be conveniently taken before a Justice, and such offender and any person who refuses to attend as a witness, when so required, before any person authorised in that behalf, or who refuses or neglects to make any answer, or to furnish any return, or to produce any document in his possession or power, or to take any oath or subscribe any declaration as aforesaid, shall for each offence incur a penalty not exceeding twenty pounds. Provided always that no person shall be required, in obedience to any summons, to travel more than ten miles from his place of abode at the time of receiving such summons, unless such reasonable allowances for expenses incident to his attendance to give evidence be tendered to him, on the scale allowed in that behalf to a witness attending on subpœna to give evidence before the Supreme Court.

Penalty.

Proviso for expenses of witnesses.

PART II.

Steam Navigation.

* * * * * *

50. Whenever any steamship has sustained or caused any accident occasioning loss of life, or any serious injury to any person, or has received any material damage affecting her seaworthiness or efficiency either in her hull or in any part of her machinery, the owner or master of such steamship shall within twenty-four hours after the happening of such accident or damage, or as soon thereafter as possible, transmit through the post office to the Marine Board by letter signed by such master, a report of such accident or damage, and the probable occasion thereof, stating the name of such steamship, the port to which she belongs, and the place where she is, and if such master neglect so to do, he shall for such offence incur a penalty not exceeding fifty pounds.

Accidents to be reported to Board.

51. If the owner of any steamship have reason to believe that such steamship has been wholly lost, he shall with all possible despatch send notice thereof to the Marine Board, and, if he neglect so to do within a reasonable time, he shall for such offence incur a penalty not exceeding fifty pounds.

Notice to be given of apprehended loss of steamships.

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Part IV.

Cancellation and Suspension of Certificates.

Marine Board to have power to investigate cases of alleged incompetency and misconduct.

87. If the Marine Board or any Local Marine Board has reason to believe that any master, mate, or engineer, is from incompetency or misconduct unfit to discharge his duties, the said Marine Board may either institute an Investigation, or may direct the Local Marine Board at or nearest to the place at which it may be convenient for the parties and witnesses to attend, to institute the same, and thereupon such persons as the Marine Board may appoint for the purpose, or, as the case may be, the Local Marine Board, shall, with the assistance of a local Stipendiary Magistrate (if any), and if there is no such Magistrate, of a competent legal assistant to be appointed by the Marine Board, conduct the Investigation, and may summon the master, mate, or engineer to appear, and shall give him full opportunity of making a defence either in person or otherwise, and shall for the purpose of such Investigation have all the powers given by the first part of this Act to inspectors appointed by the Marine Board, and may make such order with respect to the costs of such Investigation as they may deem just, and shall on the conclusion of the Investigation make a report upon the case to the said Marine Board; and in cases where there is no Local Marine Board before which the parties and witnesses can conveniently attend, or where such Local Marine Board is unwilling to institute the Investigation, the said Marine Board may direct such Investigation to be instituted before two Justices or a Stipendiary Magistrate, and thereupon such Investigation shall be conducted and the results thereof reported in the same manner and with the same powers in and with which Formal Investigations into Wrecks and casualties are directed to be conducted, and the results thereof reported under the provisions contained in the eighth part of the Imperial Act seventeenth and eighteenth Victoria, chapter one hundred and four, save only that if the Marine Board so directs, the person bringing the charge of incompetency or misconduct to the notice of the said Board shall be deemed to be the party having the conduct of the case.

Marine Board may cancel or suspend certificates in certain cases.

88. The Marine Board may suspend or cancel the Certificate (whether of Competency or of Service) of any master, mate, or engineer, in the following cases, that is to say:—

(I.) If upon any Investigation made in pursuance of the last preceding section he is reported to be incompetent, or to have been guilty of any gross act of misconduct, drunkenness, or tyranny:

(II.) If upon any Investigation conducted under the provisions contained in the eighth part of the Imperial Act seventeenth and eighteenth Victoria, chapter one hundred and four, or upon any Investigation made by a Naval Court

constituted under the said Act, it is reported that the loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by his wrongful act or default:

(III.) If he is suspended by the order of any lawfully constituted Admiralty Court, or of any Naval Court constituted as aforesaid:

(IV.) If he is shown to have been convicted of any offence:

(V.) If upon any Investigation or Inquiry respecting any shipwreck, collision, or other casualty, or respecting any charge of incompetency or misconduct against any master, mate, or engineer instituted by the Marine Board (which said Board is hereby declared to be a Court for the purposes mentioned in the two hundred and forty-second section of the Imperial Act seventeen and eighteen Victoria, chapter one hundred and four, and for the more effectual carrying out thereof, to have, so far as the same may be applicable, all the powers hereinbefore in section twenty-eight ([a]) of this Act conferred on the said Board), the said Board shall report that the loss or abandonment of or serious damage to any ship, or that a loss of life has been caused by the wrongful act or default of any such master, mate or engineer, or that he has been guilty of any gross act of misconduct, drunkenness, or tyranny: Provided that no certificate of a master, mate, or engineer issued by the Board of Trade of the United Kingdom shall be so suspended or cancelled until the said report shall have been confirmed by the Governor([b]):

And every master, mate, or engineer whose certificate is cancelled or suspended shall deliver it to the Marine Board, or as it directs, and in default shall for each offence incur a penalty not exceeding fifty pounds; and the Marine Board may at any subsequent time grant to any person whose certificate has been cancelled a new certificate of the same or of any lower grade.

89. The following rules shall be observed with respect to the cancellation and suspension of certificates, that is to say:—

Rules as to cancellation and suspension of certificates.

(I.) Every Local Marine Board, Court, or Tribunal shall at the conclusion of the case, or as soon afterwards as possible, state in open Court the decision to which they may have come with respect to cancelling or suspending any certificate, and shall in all cases send a full report upon the case with the evidence to the Marine Board, and shall also, if they shall determine to cancel or suspend any certificate, forward such certificate to the said Marine Board with their report:

([a]) This should be s. 27. *See* Act, No. 6, page 492.

([b]) But see Merchant Shipping (Colonial) Inquiries Act, 1882, s. 7.

(II.) It shall be lawful for the Marine Board, if they think the justice of the case require it, to re-issue and return any certificate which has been cancelled or suspended, or shorten the time for which it is suspended, or grant a new certificate of the same or any lower grade in place of any certificate which has been cancelled or suspended:

(III.) No certificate shall be cancelled or suspended under this section unless a copy of the report or a statement of the case upon which the Investigation is ordered has been furnished to the owner of the certificate before the commencement of the Investigation, nor, in the case of Investigations conducted by Justices or a Stipendiary Magistrate, unless one Assessor at least, appointed in manner directed by the four hundred and thirty-fourth section of the Imperial Act seventeenth and eighteenth Victoria, chapter one hundred and four, expresses his concurrence in the report.

Certificates to be delivered up.

90. Every master, mate, or engineer whose certificate is or is to be (a) suspended or cancelled in pursuance of this Act, shall, upon demand of the Local Marine Board, Court, or Tribunal by which the case is investigated or tried, deliver his certificate to them, or if it is not demanded by such Board, Court, or Tribunal, shall upon demand deliver it to the Marine Board, or as it directs, and in default shall for each offence incur a penalty not exceeding fifty pounds.

Part VII.

* * * * * *

Legal Procedure.

Jurisdiction to follow offence and offenders.

123. For the purpose of giving jurisdiction under this Act every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.

Service of summons, &c., when good.

124. Service of any summons or other process in any legal proceeding under this Act shall be deemed good service if made personally on the person to be served, or if made at his last known place of abode or business, or if made on board any ship or vessel to which he belongs, and accompanied with a statement of the purport thereof to the person being or appearing to be in command or charge of such ship or vessel.

Burden of proof that a ship is exempted.

125. If in any legal proceeding under this Act any question arises whether any ship is or is not within the provisions of this Act, or of some part thereof, such ship shall be taken to be within such provisions unless proof to the contrary is adduced.

* * * * * *

(a) But see Shipping Casualties Investigations Act, 1879, s. 3.

134. Any Stipendiary Magistrate may exercise the powers hereinbefore in any part of this Act conferred on two or more Justices.

Stipendiary Magistrate to exercise power of Justices.

NEW SOUTH WALES.

Anno tricesimo sexto Victoriæ Reginæ.

No. XXX.

An Act to Amend in Certain Particulars the Navigation Act of 1871.

[*Reserved 24th April*, 1873.]

Preamble.

WHEREAS it is expedient that the Navigation Act of 1871 should be amended in respect of certain matters defined in the interpretation clause to the said Act, and also in respect of certain other provisions in the said Act contained: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same as follows:—

Construction and short title.

1. This Act shall be read with and as forming part of the Navigation Act of 1871, hereinafter termed the Principal Act, and may be cited as the "Navigation Act Amendment Act of 1873."

Word "owner" to include manager, &c.

2. The word "owner" wheresoever occurring in the Principal Act, or in this Act, shall be taken to include the manager or secretary of any body corporate, or company.

Amendment of interpretation clause of Navigation Act of 1871.

3. In the meanings respectively set against the terms "Foreign-going ship," and "coast-trade ship" in the fourth section of the principal Act, the word "British" shall in each case be inserted between the word "registered," and the word "ship." And the proviso in the said section attached to the meaning set against the term "coast-trade ship" is hereby repealed, and the following proviso substituted therefor, viz.:—"Provided that every such ship which shall be employed in trading between any ports of adjacent Colonies may be deemed to be a coast-trade ship for such purposes of this Act as the Marine Board may deem fit."

* * * * * *

NEW SOUTH WALES.

Anno quadragesimo quinto Victoriæ Reginæ.

No. 6.

An Act to Amend the Law relating to Unseaworthy Ships and the "Navigation Act of 1871," *and for other purposes.*

[*Assented to*, 18*th October*, 1881.]

Preamble.

WHEREAS the existing law is insufficient to prevent ships from being sent to sea in an unseaworthy state from ports and places in New

South Wales, and the lives of seamen are thereby wrongfully imperilled: And whereas it is expedient to amend in certain particulars the "Navigation Act of 1871," and to make provision for the granting of certificates to Marine Surveyors: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:--

Short title and mode of citation of Act.

1. This Act when specially referred to may be cited as the "Navigation Law Amendment Act of 1881," and the following series of Acts, namely, the "Navigation Act of 1871" (being the Act thirty-fifth Victoria, number seven, and hereinafter cited as the "Principal Act"), the "Navigation Act Amendment Act of 1873" (being the Act thirty-sixth Victoria, number thirty), the "Navigation Act further Amendment Act of 1879" (being the Act forty-third Victoria, number thirteen) shall be read with this Act and with it may be collectively cited as the "Navigation Acts, 1871-1881."

* * * * * *

Amendments, &c., of Navigation Acts.

21. Upon the passing of this Act the following repeals and amendments of the "Navigation Act of 1871," and the Acts amending the same shall take effect, viz.: —

* * * * * *

(5.) The powers and authorities conferred upon the Marine Board and Local Marine Board by, and all other the provisions contained in the eighty-seventh and subsequent sections of the Principal Act, as amended by this Act, which relate to the cancellation and suspension of certificates, shall extend to authorise any such Board to institute Investigations, or direct the same to be instituted, touching any shipwreck, collision, or casualty whatsoever, or touching any misconduct or violation of the law as declared by the Principal or this Act, or touching any other act or omission charged against any master, mate, or engineer as evidencing, or from which any such Board might reasonably infer incompetency or misconduct on the part of such master, mate, or engineer:

(6.) The Marine Board shall have power to make such order as it may deem just with respect to the costs of any Investigation authorised to be instituted by such Board pursuant to the provisions of the "Navigation Acts, 1871-1881:"

(7.) In lieu of the word "twenty-eight" contained in sub-section (5) of section eighty-eight of the said Principal Act, the word "twenty-seven" shall be substituted:

(8.) The provisions respecting the burden of proof contained in the one hundred and twenty-fifth section of the Principal Act, are hereby extended and declared to be read as if

the words "or person" were inserted after the word "ship," wherever such last-mentioned word occurs in the said section.

* * * * * *

In the name and on the behalf of Her Majesty I assent to this Act.

AUGUSTUS LOFTUS.

Government House, Sydney,
18th October, 1881.

NEW ZEALAND.

Quadragesimo Primo Victoriæ Reginæ.

No. 54. 1877.

* * * * * *

An Act to Consolidate and Amend the Acts relating to Shipping and Seamen. Title.

[Reserved for the signification of Her Majesty's pleasure.]

WHEREAS it is expedient to consolidate and amend the Acts relating to merchant shipping: Preamble.

Be it therefore enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited for all purposes as "The Shipping and Seamen's Act, 1877." Short Title.

2. This Act shall come into operation so soon as Her Majesty's assent thereto shall be notified in the manner provided by the "Constitution Act," and shall apply to all British ships registered at, trading with, or being at any place within the jurisdiction of New Zealand, and to the owners, masters, and crews thereof, except as hereinafter provided. Commencement of Act.

* * * * * *

Interpretation.

5. In the construction and for the purposes of this Act (if not inconsistent with the context or subject-matter), the following terms shall have the respective meanings hereinafter assigned to them, that is to say,— Interpretation of certain terms in this Act.

"Minister" shall mean the Minister to be appointed for the purposes of this Act, as hereinafter provided, and shall also include any other Minister, being a member of the Executive Council of the Colony, at any time acting for such Minister.

"Secretary" shall mean the secretary appointed under this Act, and shall include any officer for the time being duly authorized to act in that capacity.

"Collector of Customs" shall mean and include the principal or only officer of Customs for the time being at any port.

"Ship" shall mean and include every description of vessel used in navigation not propelled by oars.

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"Master" shall mean and include every person (except a pilot) having command or charge of any ship.

"Seaman" shall mean and include every person except masters, pilots, and apprentices, duly indentured and registered, employed or engaged in any capacity on board any ship.

Whenever in this Act mention is made of "The Merchant Shipping Act, 1854" or the Imperial Merchant Shipping Act, or any amendment of that Act bearing a like name, it shall be understood that reference is made to the Acts of the Imperial Parliament of that name, and this Act shall be construed accordingly.

Part I.

General Management.

Marine Department to superintend merchant shipping.

6. There shall be a department, called the Marine Department, which shall undertake the general superintendence of matters relating to merchant ships and seamen, and shall be authorized to carry into execution the provisions of this Act and of all other Acts relating to merchant ships and seamen in force for the time being within the colony.

Minister to be appointed.

7. The Governor, in the name and on behalf of Her Majesty, may from time to time appoint a Minister of the Crown being a member of the Executive Council of the Colony, to have charge of the Marine Department and of the administration of this Act, who shall have the appointment, control, and direction of all officers and persons employed in or about carrying this Act into effect, and who shall perform the duties and have the powers and authorities by this Act imposed and conferred on him.

Secretary to be appointed.

The Governor may from time to time appoint or remove a secretary to the Department. The Minister may make and, when made, revoke, alter, and add to rules and regulations, and generally may do all things that may be necessary to carry into effect and enforce the provisions of this Act, and of all other Acts relating to merchant ships and seamen in force for the time being within the Colony.

* * * * * *

Minister may appoint Inspectors and Surveyors.

13. The Minister may, from time to time, whenever it seems expedient to him so to do, appoint any person as an Inspector or Surveyor to report to him upon the following matters, that is to say,—

(1.) Upon the nature and causes of any accident or damages which any ship has sustained or caused, or is alleged to have sustained or caused:

(2.) Whether the provisions of this Act, or any regulations made under or by virtue of this Act, have been complied with:

(3.) Whether the hull and machinery of any steamship are sufficient and in good condition:

(4.) As to the seaworthiness of any ship:

or to do, execute, or perform any of the powers, duties, and functions by this Act exercisable by an Inspector or Surveyor.

Powers of inspectors and surveyors.

14. Every such Inspector or Surveyor as aforesaid shall have the following powers, that is to say,—

(1.) He may go on board any ship, and may inspect the same and every part thereof, and the machinery, boats, equipments, cargo, or articles on board thereof to which the provisions of this Act apply, and may require the unloading or removal of any cargo, ballast, or tackle, not unnecessarily detaining or delaying her from proceeding on any voyage:

(2.) He may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make:

(3.) He may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers or returns to any inquiries he thinks fit to make:

(4.) He may require and enforce the production of all books, papers, or documents which he considers important for such purpose:

(5.) He may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

Witnesses to be allowed expenses.

And every witness so summoned as aforesaid shall be allowed such expenses as would be allowed to any witness attending on subpœna to give evidence before the Supreme Court; and, in case of any dispute as to the amount of such expenses, the same shall be referred by the Inspector or Surveyor to a Registrar or Deputy-Registrar of the Supreme Court, who, on a request made to him for that purpose under the hand of the said Inspector or Surveyor, shall ascertain and certify the proper amount of such expenses; and every person who refuses to attend as a witness before any such Inspector or Surveyor after having been required so to do in the manner hereby directed, and after having had a tender made to him of the expenses (if any) to which he is entitled as aforesaid, or who refuses or neglects to make any answer, or to give any return, or to produce any document in his possession, or to make or subscribe any declarations which any such Inspector or Surveyor is hereby empowered to require, shall for each such offence incur a penalty not exceeding ten pounds.

Penalty for refusing to give evidence.

Penalty for obstructing inspectors or surveyors in the execution of their duty.

15. Every person who wilfully impedes any such Inspector or Surveyor appointed by the Minister as aforesaid in the execution of his duty, whether on board any ship or elsewhere, shall incur a penalty not exceeding ten pounds, and may be seized and detained by such Inspector, Surveyor, or other person, or by any person or persons whom he may call to his assistance, until such offender can be conveniently taken before some Justice of the Peace or other officer having proper jurisdiction.

* * * * * *

Accidents.

Accidents to steamships to be reported to Minister.

210. Whenever any steamship has sustained or caused any accident occasioning loss of life or any serious injury to any person, or has received any material damage, affecting her seaworthiness or her efficiency, either in her hull or in any part of her machinery, the owner or master shall, within twenty-four hours after the happening of such accident or damage, or as soon thereafter as possible, send to the Minister, by letter signed by such owner or master, a report of such accident or damage, and of the probable occasion thereof, stating the name of the ship, the port to which she belongs, and the place where she is; and if such owner or master neglect so to do he shall for such offence incur a penalty not exceeding fifty pounds.

Notice to be given of apprehended loss of ship.

211. If the managing owner, or, in the event of there being no managing owner, the agent of any ship, have reason, owing to the non-appearance of such ship, or to any other circumstance, to apprehend that such ship has been wholly lost, he shall, as soon as conveniently may be, send to the Minister notice, in writing, of such loss and of the probable occasion thereof, stating the name of the ship and her official number, if any, and the port to which she belongs; and if he neglect to do so within a reasonable time he shall incur a penalty not exceeding fifty pounds.

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Part V.

Wrecks, Casualties, and Salvage.

Inquiries into Shipping Casualties.

Preliminary Inquiry into shipping casualties.

237. In case of any of the events following in this Act referred to as shipping casualties, that is to say,—

(1.) When on or near the coasts, or within any tidal water of the colony, any ship is, or has been, in distress, or lost, wrecked, stranded, abandoned, or otherwise damaged, or has been in collision with another ship, or the life of any person belonging to or on board such ship has been lost:

(2.) When any such shipping casualty happens elsewhere and any witness is found in the colony—

it shall be lawful for any Collector of Customs, or for any other

person appointed for the purpose by the Minister, to make a preliminary inquiry into such shipping casualty; and he shall for that purpose have all the powers given by section fourteen of this Act to Inspectors appointed by the Minister.

Witnesses to be allowed expenses. And penalty for refusing to give evidence.

238. Every person summoned as a witness shall be allowed such expenses as are allowed by section fourteen of this Act, and shall be subject to the like penalties and to the other provisions contained in the said section.

Penalty for obstructing officer.

239. Every person who wilfully impedes such Collector of Customs or other person as aforesaid in the execution of his duty shall incur the penalty named in section fifteen of this Act, and may be seized and detained as therein provided.

Formal Investigation before Justices.

240. If it appears to such Collector or person as aforesaid, either upon or without preliminary inquiry as aforesaid, that a formal investigation is requisite or expedient, or if the Minister so directs, he shall apply to any two Justices or to a Resident Magistrate to hear the case; such Justices or Magistrate shall thereupon proceed to hear and try the same, and shall, for that purpose, so far as relates to the summoning of parties, compelling the attendance of witnesses, and the regulation of the proceedings, have the same powers as if the same were a proceeding relating to an offence or cause of complaint upon which they or he have power to make a summary conviction or order, or as near thereto as circumstances permit; and upon the conclusion of the case, or as soon afterwards as possible, the said Justices or Magistrate shall state in open Court the decision they or he may have come to, and shall in all cases send a report to the Minister, containing a full statement of the case, and of their or his decision thereon, accompanied by the evidence; and shall also, should they or he determine to cancel or suspend any certificate, forward such certificate (if produced in Court) to the Minister along with their or his report.

Assessors to be appointed to assist at Investigation.

241. The said Justices or Magistrate holding a formal investigation into a shipping casualty shall hold the same with the assistance of a person or persons to act as an Assessor or Assessors, of nautical, engineering, or other special skill or knowledge, to be appointed by them for the purpose.

The said Justices or Magistrate, when of opinion that the Investigation is likely to involve the cancellation or suspension of the certificate of a master or mate, shall, where practicable, appoint a person having experience in the Merchant Service to be one of the Assessors.

Each Assessor shall either express his concurrence in such report by signing the same, or report to the Minister his reasons for his dissent therefrom.

Person charged to have opportunity of making a defence.

242. Every formal investigation into a shipping casualty shall be conducted in such manner that, if a charge is made against any person, that person shall have an opportunity of making a defence.

Previous to such formal investigation as aforesaid being com-

Certificated officers to be furnished with copy of report, &c.

menced, a copy of the report or a statement of the case upon which it has been made shall be furnished to all officers of a ship or ships with regard to which such investigation is to be held as hold, or are by law required to hold, certificates either of competency or service.

Master, mate, or engineer may be required to deliver certificate, to be held until close of investigation.

243. Such Justices or Magistrate as aforesaid may, if they or he think fit, require any master, mate, or engineer possessing a certificate of competency or service, whose conduct is called in question, or appears to them or him likely to be called in question, in the course of such investigation, to deliver such certificate to them or him (a), and they or he shall hold the certificate so delivered until the conclusion of the Investigation; and if any master, mate, or engineer fails so to deliver his certificate when so required, he shall incur a penalty not exceeding fifty pounds.

Justices or Magistrates may cancel or suspend certificate.

244. The said Justices or Magistrate may, subject to confirmation by the Governor, cancel or suspend the certificate (whether of competency or service) of any master, mate, or engineer if, upon any investigation made in pursuance of the provisions of this Act, it is found that a shipping casualty has been caused by his wrongful act or default. No certificate shall be cancelled or suspended unless the requirements of section two hundred and forty-two have been complied with; and no certificate of any master or mate shall be cancelled or suspended unless at least one Nautical Assessor shall concur in the report of the said Justices or Magistrate, and no certificate of any engineer shall be cancelled or suspended unless at least one Engineering Assessor shall concur in such report.

Costs of such Investigations.

245. The said Justices or Magistrate may make such order with respect to the costs of any such Investigation or any portion thereof as they or he may deem just, and such costs shall be paid accordingly, and shall be recoverable in the same manner as other costs incurred in summary proceedings before them or him; and the Minister may, if in any case he thinks fit so to do, pay the expense of any such investigation, and may pay to such Assessor as aforesaid such remuneration as he thinks fit.

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Inquiries relating to missing ships.

247. Whenever a British ship has been lost or is supposed to have been lost, and any evidence can be obtained in the Colony as to the circumstances under which she proceeded to sea or was last heard of, the Minister (without prejudice to any other powers) may, if he thinks fit, cause an inquiry to be made or formal investigation to be held, and all the provisions of this Act, so far as the same can be made applicable, and the circumstances of the case permit, shall apply to any such Inquiry or Investigation.

Place of Investigation.

248. A preliminary inquiry or a formal investigation into a shipping casualty may be held at any place appointed in that behalf by the Minister.

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(a) But see Shipping Casualties Investigations Act, 1879, s. 3.

PART VI.

Legal Procedure.

290. For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.

Offence where deemed to have been committed.

291. In all cases where any district within which any Court or Justice of the Peace or other Magistrate has jurisdiction, either under this Act or under any other Act or common law, for any purpose whatever, is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, every such Court, Justice of the Peace, or Magistrate shall have jurisdiction over any ship or boat being on or lying or passing off such coast, or being in or near such bay, channel, lake, river, or navigable water as aforesaid, and over all persons on board such ship or boat, or for the time being belonging thereto, in the same manner as if such ship, boat, or persons were within the limits of the original jurisdiction of such Court, Justice, or Magistrate.

Jurisdiction over ships lying off the coasts.

292. Service of any summons or other matter in any legal proceeding under this Act shall be good service if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons for him on board any ship to which he may belong with the person being or appearing to be in command or charge of such ship.

Service to be good if made personally, or on board ship.

293. In all cases where any Court, Justices of the Peace, or Magistrate has or have power to make an order directing payment to be made of any seaman's wages, penalties, or other sums of money, then, if the party so directed to pay the same is the master or owner of a ship, and the same is not paid at the time and in manner prescribed in the order, the Court, Justices, or Magistrate who made the order may, in addition to any other powers they or he may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress or poinding and sale of the said ship and her tackle.

Sums ordered to be paid levisable by distress on ship.

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PART VII.

Miscellaneous.

301. Where any order, notice, statement, or document requires, for the purpose of any provision of this Act, to be served on the master of a ship, the same shall be served, where there is no master and the ship is in the colony, on the managing owner of the ship, or if there is no managing owner on some agent of the owner residing in the colony, or where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

Service of order on master &c.

Any such order, notice, statement, or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or, in the case of a master, by leaving it for him on board the ship with the person being or appearing to be in command or charge of such ship.

Any person who obstructs the service of any order, notice, statement, or document on the master of a ship shall incur a penalty not exceeding ten pounds, and if the owner or master of the ship is party or privy to such obstruction he shall be guilty of a misdemeanour.

* * * * * *

NOVA SCOTIA.

(*See* CANADA.)

ONTARIO.

(*See* CANADA.)

PRINCE EDWARD ISLAND.

(*See* CANADA.)

QUEENSLAND.

Anno quadragesimo primo Victoriæ Reginæ.

No. 3.

An Act to Consolidate and Amend the Laws relating to the Marine Board, Navigation, Pilotage, Harbours, Lights, and the keeping and carriage of Gunpowder.

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to the Marine Board, navigation, pilotage, harbours, lights, and the keeping and carriage of gunpowder:

[*Reserved: Her Majesty's assent proclaimed, 20th July,* 1877.]

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliaments asembled, and by the authority of the same as follows:—

* * * * * *

Interpretation.

26 Vict., No. 2, 2 Stat. 1,089.

2. In the construction and for the purposes of this Act, and in all instruments purporting to be issued thereunder, the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say:—

"The Board of Trade," the lords of the committee of Privy Council of Her Majesty appointed for the consideration of matters relating to trade, &c.;

"The board," the Marine Board of Queensland;

"The portmaster," the person for the time being lawfully charged with the duties of portmaster of Queensland;

"Harbour master," any person appointed at any port in Queensland to perform the duties of harbour master at such port, or any person acting for him;

"Pilot," any person not belonging to a vessel who being duly authorized has the conduct thereof;

"Vessel," any ship or other vessel used in navigation whether propelled by sails, steam, or oars;

"Master," every person (other than a pilot) having command or charge of any vessel;

* * * * * *

"Justice," a justice of the peace for Queensland;

* * * * * *

Marine Board: Its Powers and Functions.

Marine board to consist of five members.

5. The Governor, with the advice of the Executive Council, may, by letters patent under the seal of the Colony of Queensland, constitute and incorporate a board to be called "The Marine Board of Queensland," to consist of a chairman and four other members, such chairman being the Portmaster of the colony for the time being, and the Governor in Council may from time to time remove any member or members of the said board, and fill up any vacancy that may occur in the said board, and fix the amount of remuneration to be paid to the members thereof from the consolidated revenue: Provided always that until the Marine Board shall be constituted as aforesaid, the board established by the Act twenty-six Victoria number two shall be deemed to be constituted under this Act, and shall possess the same powers, rights, and privileges as if constituted under this Act.

Governor in Council to fill up vacancies.

26 Vict., No. 2, s. 4, 2 Stat. 1,039.

Present board to retain powers until new board is constituted.

Treasurer may appoint vice-chairman.

6. The Treasurer may appoint any one of the members of the board to be vice-chairman, who, during the absence or disability of the chairman shall have and exercise all the duties and powers conferred upon the chairman by this Act, or by any regulation made thereunder.

* * * * * *

Jurisdiction of the board.

10. The powers, authorities, and jurisdiction of the board shall extend and may be exercised by them in and over any tidal waters in Queensland, and from high water mark to the distance of one nautical league to seaward from low water mark along the coast line of Queensland and the Islands thereof respectively.

26 Vict., No. 2, s. 10, 2 Stat. 1,040

Powers and authority of Board.

11. Subject to the control of the Treasurer, the board shall, after the commencement of this Act, have full authority and power within the limits of its jurisdiction, to carry out the provisions of the second, third, and fourth parts, and also of any other portion of this Act, in which any power or authority is expressly or

impliedly conferred upon such board, and shall when so directed by the Treasurer, or when the circumstances of the case may to them seem to render such a course necessary, inquire or cause any inspector appointed under this Act, or any other person to inquire into any matter connected with seamen, cargo, shipping, the conveyance of passengers, navigation, wrecks and casualties, pilots and pilotage, the preservation and improvement of any port, and any works carried on or about to be carried on in any port for the use, convenience, or safety of vessels, all matters connected with lights and lighthouses, the dues levied or to be levied in any port, and all questions which may arise as to whether the provisions of this Act or of any regulations made thereunder have been complied with, and generally upon any matter whatsoever in relation to which jurisdiction, authority, or power is by this Act conferred upon the board, and the board shall when so directed, or when it shall appear to them necessary report the result of such inquiry to the Treasurer.

* * * * * *

Board may appoint surveyors.

16 Vict., No. 46, s. 21, 4 Stat. 2,314.

14. The board may from time to time, with the consent of the Treasurer, in writing under his hand, select and employ such number of fit and proper persons as surveyors for the purposes of the third and fourth Parts of this Act, and at such ports or places as they may think proper.

Board may send inspectors on board vessels whenever necessary.

16 Vict., No. 46, s. 36, 4 Stat. 2,319.

15. The board may from time to time instruct any inspector or any surveyor appointed by them as aforesaid, or any other person, to go on board any vessel to report to them whether the provisions of the third and fourth Parts of this Act or the regulations made under this Act have been complied with, and also whether the hull and equipments, and in the case of a steam-vessel whether the machinery also of the same be sufficient and in good condition, or to report to them upon the nature and causes of any accident or damage which such vessel has sustained or caused, or is said to have sustained or caused. And the board may require the master to produce the certificate of registry or other national papers of the vessel, and may inspect and take copies thereof or of any parts thereof. And the board may require the owner or master or any member of the crew of any British vessel to produce any official log-books, agreements, or documents relating to such crew or to any member thereof, and may inspect such official log-books or documents and may take copies thereof or of any part thereof. And may require any such master to produce a list of all persons on board his vessel. They may summon the master or any other person to appear and give any explanation concerning the vessel or her crew, or concerning the aforesaid documents, or any matter or thing relating to such vessel, crew, or documents. And may also examine any such master or other person, and may require answers and returns to such inquiries as they may think fit to make.

Board may require production of papers, &c.;

and official log-books;

and list of persons on board; and may summon witnesses;

and examine master, &c.

16. Every inspector and every surveyor appointed under this Act shall have and may exercise the following powers, that is to say :— **Powers of inspectors and surveyors.**

(1.) He may at all necessary or reasonable times go on board and inspect any vessel to which this Act applies, and may without unnecessarily detaining or delaying such vessel, examine the hull, machinery, boats, equipments or materials on board or belonging to such vessel, for the purpose of ascertaining whether the provisions of the third, fourth, and seventh parts of this Act, or of any regulations made thereunder, have been complied with, or for inquiring into or ascertaining the nature or causes of any accident or damage which such vessel has sustained or caused, or is alleged to have caused or sustained, or for making any report required by the board.

(2.) He may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the proper execution of his duty.

(3.) He may require the attendance of all such persons as he may consider necessary to call before him, and may require answers or returns to any question or questions he may think necessary to put, and may enforce the production of all books, papers, logs, or other documents that he may consider necessary.

And any such inspector may in addition to the above powers when he considers necessary for the purposes of this Act by summons under his hand require the attendance of all such persons as he may think necessary to call before him, and examine such persons, and may require any person so examined by himself or by any surveyor to make and subscribe a statutory declaration of the truth of the statements made by him in his examination, and may require the master of any vessel to produce a list of all persons on board his vessel, and to muster the crew of such vessel when such inspector shall deem it necessary.

17. Every person summoned as hereinbefore mentioned shall be allowed such expenses as would be allowed to any witness attending on subpœna to give evidence before the Supreme Court; and in case of any dispute as to the amount of such expenses the same shall be referred by the board or such inspector to the taxing officer of the said Court, and such officer shall on a request made to him for that purpose by the board or such inspector ascertain and certify the proper amount of such expenses. **Proviso for expenses of witnesses.**

18. If any person without reasonable excuse (proof whereof shall lie on him) does any of the following things, viz. :— **Penalties to witnesses, &c.**

(1.) Having been summoned and having had the expenses (if any) to which he is entitled tendered to him fails to attend as a witness before the board or any inspector, or to make any

answer, or to give any return, or to produce any document, or to make or sign any declaration; or

Impeding inspector.

(2.) Prevents or impedes any inspector or surveyor in the execution of his duty on board ship or elsewhere, or knowingly misleads or deceives the board or any inspector or surveyor;

he shall for every such offence forfeit and pay a sum not exceeding fifty pounds, and where the offence consists of preventing or impeding as aforesaid, the inspector, surveyor, or any person called by him to his assistance, may seize and detain the offender until he can be conveniently taken before a court of summary jurisdiction to be dealt with according to law.

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Examinations and Certificates of Masters, Mates, and Engineers.

The Board may investigate or cause enquiry to be made in case of casualty to vessels.

37. The board may themselves investigate or may cause an investigation to be held by justices as herein directed in any of the following cases:—

(1.) When within the limits of the Colony of Queensland any vessel is or has been in distress, or lost, wrecked, stranded, abandoned, or otherwise damaged, or has been in collision with any other vessel, or the life of any person belonging to such vessel has been lost;

(2.) When without the limits of the said colony any vessel is or has been in distress, or lost, wrecked, stranded, abandoned, or otherwise damaged, or has been in collision with any other vessel, or the life of any person belonging to such vessel has been lost, and any witness is found within the said colony;

As to incompetency.

(3.) When complaint has been made to the board, or the board have reason to believe that any master, mate, or engineer is incompetent to discharge his duties, or has committed any act of misconduct for which his certificate of competency or service is liable to be cancelled or suspended;

Provided always that previous to any such investigation being held it shall be lawful for the inspector at or near the place where the casualty occurred or where any witness is found, or for any other person appointed by the board to hold a preliminary inquiry into such casualty, and such Inspector or other person shall forward the evidence taken and report the result of such inquiry to the board, and for the purposes of such preliminary inquiry the person so appointed by the board shall have all the powers given to inspectors by the first part of this Act.

In certain cases justices may enquire, &c.

In cases where the parties and witnesses cannot conveniently attend before the board, or when from other circumstances the board is unable to hold such enquiry, or when it appears expedient to the board so to do, the board may direct the investigation to be

held before two justices, and such justices may make such order with respect to the costs of such investigation as they may deem just, and shall on the conclusion of the investigation make a report containing a full statement of the case, and shall forward the same with the evidence to the board. And in cases where nautical or engineering skill and knowledge are required, or in which any question may arise as to the cancellation or suspension of any certificate, the board shall appoint some person or persons of nautical or engineering skill and knowledge to act as assessor or assessors to such justices, and such assessor or assessors shall during such inquiry form part of the court, and shall, upon the conclusion of the case, sign the report, or if they or he dissent therefrom shall signify to the board in writing such dissent and their or his reasons therefor.

For the purposes of such investigation or inquiry the justices or persons holding the same shall have all the powers given to inspectors by the first part of this Act.

At any such investigation or enquiry the board, inspectors, justices, or other persons holding the same, may summon before them the master, mate, or engineer, and may also summon such witnesses as they may think necessary for the purpose of giving evidence. And when the conduct of any master, mate, or engineer is under investigation, full opportunity shall be given him of making a defence either in person or otherwise. Provided always that if the board so directs any person bringing a charge of incompetency or misconduct to the notice of the board shall be deemed to be the party having the conduct of the case.

Marine Board may cancel or suspend certificates in certain cases.

38. The board or such justices may suspend or cancel the certificate (whether of competency or of service) of any master, mate, or engineer, in the following cases, that is to say :—

(1.) If upon any investigation made in pursuance of the last preceding section he is found to be incompetent or to have been guilty of drunkenness or tyranny, or any gross act of misconduct or negligence ;

(2.) If it is shown that the loss or abandonment of, or serious damage to any vessel has been caused by his wrongful act or default ;

(3.) And in case of any certificate issued under the provisions of this Act, if the holder of such certificate is shown to have been convicted of any offence ;

And the board may at any subsequent time grant to any person whose certificate has been cancelled under the authority of this Act, a new certificate of the same or of any lower grade, or in case of suspension, may shorten the time for which such certificate has been suspended.

Rules as to cancellation and suspension of certificates.

39. The following rules shall be observed with respect to the cancellation and suspension of certificates, that is to say :—

(1.) Any master, mate, or engineer whose conduct is in question

may attend the investigation, and may, if he thinks fit, be sworn and examined as an ordinary witness in the case.

(2.) At the conclusion of the investigation, or as soon afterwards as possible, the board or justices shall state in open court their decision, and in the case of investigations conducted by justices, the justices shall also, if they determine to cancel or suspend any certificate, forward such certificate to the board with their report.

(3.) No certificate shall be cancelled or suspended unless a copy of the report or a statement of the case upon which the investigation is to be held has been furnished to the owner of the certificate before the commencement of the investigation, nor, in the case of investigations conducted by justices, unless one assessor at least appointed in manner directed by this Act expresses his concurrence in the report.

* * * * * *

Officer to deliver up certificate at or before Investigation.

41. Every master, mate, or engineer into whose conduct an investigation may be held under this Act shall, on demand of the board, court, inspector, or tribunal by whom the case may be investigated or tried, deliver up his certificate to them, or if it is not demanded at or before (a) such Investigation shall on demand deliver it as the board directs, and in default for every such offence shall forfeit and pay any sum not exceeding Fifty pounds.

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Steam Navigation and Regulation of Passenger Vessels.

Accidents to be reported to court, &c.

62. Whenever any vessel has sustained or caused any accident occasioning loss of life, or any serious injury to any person, or has been stranded, or has received any material damage affecting her seaworthiness or efficiency either in her hull or in any part of her machinery, the owner, master, or other person having the charge of such vessel shall within twenty-four hours after the happening of such accident or damage, or as soon thereafter as possible, forward to the inspector at the first port at which she may call, or with which he may communicate by letter, and also to the board, a report of such accident or damage, and the probable occasion thereof, stating the name of the vessel, the port to which she belongs, and the place where she is and such master, or, if the master be dead, the chief surviving officer, and also every such other person belonging to the vessel as the board may direct, shall as soon as possible after his first landing in Queensland after the happening of such casualty, attend and submit himself to examination before the board or any inspector, or, where there is no inspector, before the police magistrate; and if any master, officer, or other person, without good and sufficient reason, shall neglect or refuse to attend and submit himself to examination as aforesaid, he

(a) But see Shipping Casualties Investigations Act, 1879, s. 3.

shall for such offence forfeit and pay any sum not exceeding fifty pounds.

63. Any witness of a shipping casualty found at a place other than the place where the inquiry respecting such casualty is or may be held may be examined by an inspector or other person appointed by the board at the place where such witness is found.

Witness may be examined when found.

64. If the owner or agent of any vessel trading in Queensland waters have reason, owing to the non-appearance of such vessel, or to any other circumstance, to apprehend that such vessel has been lost, he shall forthwith send notice thereof to the board, and shall if required by the board furnish to them such information as he may be able to give respecting such vessel and the loss thereof, and the property and persons on board, and if he neglect so to do he shall on conviction for every such offence forfeit and pay a sum not exceeding fifty pounds.

Notice of loss of ships to be sent to board.

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Legal procedure.

185. All penalties and other sums of money made payable by virtue of this Act or of any regulation made thereunder may be recovered with costs in a summary way before any two or more justices of the peace in petty sessions, and in default of payment the same may be enforced by distress and sale of the goods and chattels of the offender, and if there be no sufficient distress found every such offender may be imprisoned for any term not exceeding three months.

Penalties may be recovered summarily.

26 Vict., No. 2, s. 32, 2 Stat. 1044.

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187. No conviction or order under this Act or such regulations as aforesaid shall be quashed for want of form, or be removed by *certiorari* or otherwise into the supreme court, and no warrant of commitment or order for imprisonment shall be held void by reason of any formal defect therein.

No *certiorari*.

16 Vict., No. 46, s. 54, 4 Stat 2323.

* * * * * *

190. No distress levied in any proceeding under this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect of form in the summons, order, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all parties aggrieved by such defect or irregularity may recover satisfaction for the special damage in an action.

Distress not unlawful for want of form.

16 Vict., No. 46, s. 55, 4 Stat. 2323.

191. Service of any summons, proceeding, or other matter in any legal proceeding under this Act shall be deemed good service if made personally on the person to be served, or if made at his last known place of abode or business, or if made on board any vessel to which he belongs and accompanied with a statement of the purport thereof to the person in command or to the person in charge of such vessel.

Service to be good if made personally, or at abode, or on board ship, &c.

16 Vict., No. 46, s. 48, 4 Stat. 2322.

Sums ordered to be paid leviable by distress on ship.

17 & 18 Vict., c. 104, s. 518, 4 Stat. 2117.

192. In all cases where any court, justice, or justices have power to make an order or conviction directing payment to be made of any penalties or other sums of money, then if the party so directed to pay the same is the master or owner of a vessel and the same is not paid at the time and in manner prescribed in the order or conviction, such court, justice, or justices who made the order or conviction may, in addition to any other powers they or he may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress and sale of the said vessel her tackle, furniture, and apparel.

Burden of proof that a ship is exempted.

16 Vict., No. 46, s. 50, 4 Stat. 2832.

193. If in any legal proceeding under this Act any question arises whether any vessel is or is not within the provisions of this Act, such vessel shall be taken to be within such provisions unless proof to the contrary is adduced.

Jurisdiction to be where the offence is committed and wherever offender is.

16 Vict., No. 46, s. 4, 4 Stat. 2809.

194. For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in Queensland in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.

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ST. HELENA.

HAS NO ORDINANCE RESPECTING WRECK INQUIRIES.

SAINT LUCIA.

No. 15, 17TH NOVEMBER, 1879.

An Ordinance Enacted by the Governor, with the advice and consent of the Legislative Council of Saint Lucia, &c., &c., &c. To make provision for Inquiry into the causes of Wrecks occurring on the Coasts of this Island or its dependencies.

L.S.

(Signed) MACNAMARA DIX,
Administering the Government.

Preamble.

WHEREAS no competent tribunals at present exist by which the causes of Wrecks on the Coasts of this Island or its dependencies, and the circumstances attending such Wrecks, may be inquired into and investigated, and it is desirable that such tribunals should be established,

Words of enactment.

Be it enacted by the Governor, with the advice and consent of the Legislative Council of St. Lucia, as follows :—

Short title of Ordinance and when to come into force.

1. This Ordinance may be cited as the "Wrecks Ordinance, 1879," and shall come into force on its Proclamation.

2. Whenever any ship is lost, abandoned, or materially damaged on or near the coasts of this Island or its dependencies, it shall be lawful for the Stipendiary Magistrate of the District in or near which such loss, abandonment, or damage occurred, to make inquiry respecting such loss, abandonment, or damage. And he shall, for that purpose, have the following powers, that is to say :—

Inquiry by Stipendiary Magistrate.

His powers.

I. He may go on board such ship and inspect the same.

II. He may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers to any inquiries he thinks fit to make.

III. He may require and enforce the production of all books, papers, or documents, which he considers important for such purpose.

IV. He may administer oaths, or in lieu thereof require every person examined by him to make and subscribe a declaration of the truth of the statement made by him in his examination.

Every person who refuses to attend as a witness when summoned, or who refuses or neglects to make any answer or give any return, or to produce any document in his possession, or to make Oath or subscribe any declaration required of him under this Ordinance, shall for each offence incur a penalty not exceeding Ten Pounds. And upon the conclusion of the case, the said Stipendiary Magistrate shall send in his Report thereof to the Governor.

Penalty for neglect or refusal to give evidence.

Report to the Governor.

3. Should it appear to the Governor, on reading such report, that a more formal investigation is requisite or expedient, he shall notify his opinion to such Stipendiary Magistrate, who shall thereupon associate with himself such other Stipendiary Magistrates, Justices of the Peace, or other person or persons as shall be nominated for that purpose by the Governor, and shall, together with them, form a Court for the purpose of hearing the Case. And the Court so formed shall proceed to hear and try the same; and shall for that purpose, so far as relates to the examining of parties, compelling the attendance of witnesses, and the conduct and regulation of the proceedings, have and exercise the same powers as if the same were a proceeding relating to an offence or cause of complaint, upon which a Stipendiary Magistrate has power to decide summarily, or as near thereto as circumstances permit. And upon the conclusion of the case, the said Court shall send in a report to the Governor, containing a full statement of the case, and of their opinion thereon, accompanied by such report of, or extracts from, the evidence, and such observations as they may think fit.

Constitution of a Court for the purposes of this Ordinance.

Report to the Governor.

4. In cases where Nautical skill and knowledge are required, the Governor shall have the power, either at the request of such Court, or at his own discretion, to appoint some person of Nautical skill and knowledge to act as Assessor to such Court; and such Assessor

Nautical Assessor.

shall, upon the conclusion of the case, either signify his concurrence in their report by signing the same, or if he dissents therefrom shall signify such dissent, and his reasons therefor, to the Governor.

Costs.

5. The said Court may make such order with respect to the Costs of any such investigation, or any portion thereof, as they may deem just; and such costs shall be paid accordingly and shall be recoverable in the same manner as other costs in summary proceedings before a Stipendiary Magistrate.

Passed the Legislative Council this 16th day of October, 1879.

(Signed) CHARLES J. MCLEOD,
Clerk of the Council.

Given under my Hand and the Great Seal of the said Island of Saint Lucia, this seventeenth day of November in the Year of Our Lord one thousand eight hundred and seventy-nine, and in the forty-third year of Her Majesty's Reign.

By Command,

(Signed) CHARLES J. MCLEOD,
Chief Clerk.

Duly proclaimed in the town of Castries, this 17th day of November, 1879.

(Signed) L. MALLET-PARET,
Acting Sheriff.

SAINT LUCIA.

No. 7. 15TH JUNE, 1881.

Title

An Ordinance Enacted by the Governor, with the advice and consent of the Legislative Council of Saint Lucia, &c., &c., &c. To amend "The Wrecks Ordinance, 1879."

L.S.

(Signed) ROGER TUCK'D GOLDSWORTHY.

Words of Enactment.

BE IT ENACTED AND ORDAINED by the Governor, with the advice and consent of the Legislative Council of St. Lucia as follows:—

Short Title and Construction of Ordinance.

1. This Ordinance may be cited as "The Wrecks Ordinance Amendment Ordinance, 1881," and shall be construed as one with "The Wrecks Ordinance, 1879," and together with that Ordinance may be cited as "The Wrecks Ordinances, 1879 and 1881," and shall come into force on its Proclamation.

Repeals Section 4 of "The Wrecks Ordinance, 1879."

2. Section four of "The Wrecks Ordinance, 1879," is hereby repealed.

3. Where any investigation involves or appears likely to involve

any question as to the cancelling or suspension of the certificate of a Master, Mate, or Engineer, such investigation shall be held with the assistance of at least one Assessor, or, where practicable, of two Assessors, having experience in the Merchant Service, to be appointed by the Governor, and such Assessor, or each such Assessor, shall either sign the Report made on such Investigation, or if he dissents therefrom shall signify such dissent, and his reasons therefor, to the Governor.

Appointment of Assessors at Investigation.

4. No certificate shall be cancelled or suspended, unless a copy of the Report, or a statement of the case, upon which the Investigation is ordered has been furnished to the owner of the certificate before the commencement of the Investigation, nor unless one Assessor at least expresses his concurrence in the Report.

As to cancellation or suspension of certificates.

Passed the Legislative Council this 11th day of May, 1881.

(Signed) FRANCIS FERGUSON,
Acting Clerk of the Council.

Given under my Hand and the Great Seal of the said Island of Saint Lucia, this fifteenth day of June in the year of Our Lord One thousand eight hundred and eighty-one, and in the forty-fourth year of Her Majesty's Reign.

By Command,

(Signed) FRANCIS FERGUSON,
Acting Chief Clerk.

Duly proclaimed in the Town of Castries, this 15th day of June, 1881.

(Signed) A. GALL, *Sheriff.*

ST. VINCENT.

No. 20 OF 1880.

An Ordinance to make provision for Inquiry into the causes of Wrecks occurring on the Coasts of this Colony.

[*23rd December*, 1880.]

WHEREAS Wrecks may take place on the Coasts of this Colony and at present no competent tribunal exists by which the cause of and circumstances attending such Wrecks may be inquired into and investigated, and it is very desirable that such Tribunal should be established.

Be it therefore enacted and ordained by the Governor by and with the advice and consent of the Legislative Council of Saint Vincent as follows:—

1. This Ordinance may be cited as "The Wrecks Inquiry Ordinance, 1880."

Short title.

2. Whenever any Ship is lost, abandoned, or materially damaged on or near the Coasts of this Colony it shall be lawful for the Police Magistrate of the Police District in or near which such loss,

On any Wreck Inquiry to be made before Police Magistrate.

abandonment, or damage occurred to make inquiry respecting such loss, abandonment, or damage: And he shall for that purpose have the following powers (that is to say):—

1. He may go on board such Ship and inspect the same;
2. He may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers to any inquiries he thinks fit to make;
3. He may require and enforce the production of all books, papers or documents which he considers important for such purpose;
4. He may administer oaths, or in lieu thereof require every person examined by him to make and subscribe a Declaration of the truth of the statements made by him in his examination.

Every person who refuses to attend as a Witness when summoned, or who refuses or neglects to make any answer, or give any return, or to produce any document in his possession, or to make or subscribe any Declaration required of him under the authority of this Ordinance shall for each offence incur a penalty not exceeding Ten Pounds, and any person may sue for such penalty, and proceedings for its recovery may be taken and the same shall be appropriated under the "Summary Procedure Act, 1853."

And upon the conclusion of the case the said Police Magistrate shall send in his report thereof to the Governor.

Governor may order formal investigation.

3. Should it appear to the Governor on reading such Report that a more formal investigation is requisite or expedient, he shall notify his opinion to such Police Magistrate who shall thereupon associate with himself two or more persons to be nominated by the Governor, and shall, together with them, form a Court for the purpose of hearing the case. And the Court so formed shall proceed to hear and try the same, and shall for that purpose so far as relates to the examining of parties, compelling the attendance of witnesses, and the conduct and regulation of the proceedings have and exercise the same powers as if the same were a proceeding relating to an offence or cause of complaint upon which a Police Magistrate has power to decide summarily, or as near thereto as circumstances permit.

And upon the conclusion of the case the said Court shall send in a Report to the Governor containing a full statement of the case and of their opinion thereon, accompanied by such Report or of extracts from the evidence and such observations as they may think fit.

Governor may appoint Nautical Assessors.

4. In cases where Nautical skill and knowledge are required, the Governor shall have the power either at the request of such Court or at his own discretion to appoint some person of Nautical skill and knowledge to act as Assessor to such Court, and such Assessor shall

upon the conclusion of the case either signify his concurrence in their Report by signing the same, or, if he dissents therefrom, shall signify such dissent and his reasons therefor to the Governor. And the Governor may pay from the Public Treasury to such Assessor such sum for his remuneration as the Governor may deem reasonable and just.

Court may order costs.

5. The said Court may make such order with respect to the costs of any such Investigation, or any portion thereof as they may deem just, and such costs shall be paid accordingly and shall be recoverable in the same manner as other costs in summary proceedings before a Police Magistrate.

No. 2, 1873.

SIERRA LEONE.

In the thirty-seventh year of the reign of Her Majesty Queen Victoria.

GEORGE BERKELEY, Esq.,

Governor and Commander-in-Chief of the West Africa Settlements.

[*14th November*, 1873.]

At a Legislative Council held on the fourteenth day of November in the year of our Lord One thousand eight hundred and seventy-three.

Title.

An Ordinance to appoint Courts or Tribunals to inquire into the cases of wrecks and otherwise in relation to shipping in the Settlement of Sierra Leone.

Preamble.

WHEREAS it is enacted by the two hundred and forty-second section of the Act of the Imperial Parliament intituled, "The Merchant Shipping Act, 1854," that the Board of Trade may suspend or cancel the certificate (whether of competency or service) of any master or mate in certain cases, one of which cases set forth in paragraph 5 of the said section is as follows:—"If upon any investigation made by any Court or Tribunal authorized, or hereafter to be authorized, by the Legislative Authority in any British Possession to make inquiry in charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such Court or Tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of, or serious damage to, any ship or loss of life has been caused by his wrongful act or default, and such report (a) is confirmed by the Governor or person administering the Government of such possession:" And whereas by the twenty-third section of "The Merchant Shipping Act Amendment Act, 1862," the power of suspending or cancelling the certificate of a master or mate has in certain respects been transferred to such Court or Tribunal as shall have investigated

(a) But see Merchant Shipping (Colonial) Inquiries Act, 1882, s. 7.

or tried the case: And whereas it is expedient to constitute and authorise Courts or Tribunals in this Settlement for the purposes stated in the said recited sections:

Court or Tribunal constituted to perform in this Settlement certain duties mentioned in the 242nd section of "The Merchant Shipping Act, 1854," and the 23rd section of "The Merchant Shipping Act Amendment Act, 1862."

I. Be it hereby enacted that the Police Magistrate or Acting Police Magistrate of this Settlement in Freetown and such one or two more person or persons as the Governor shall from time to time nominate or appoint shall, and the same are hereby constituted and authorized to be a Court or Tribunal to sit at Freetown with full power and authority to act for all the purposes, and to make inquiry into all the matters set forth in the said two hundred and forty-second section of "The Merchant Shipping Act, 1854," and the said twenty-third section of "The Merchant Shipping Act Amendment Act, 1862," whether such matters have already happened or shall hereafter happen; provided that such matters have happened or shall happen in this Settlement, or on or near the Coasts thereof, and further that it shall be lawful for the Governor or other Officer for the time being administering the Government of this Settlement upon any occasion on which he may see fit, to nominate and appoint any persons whatever, not less than three in number, to be a Court or Tribunal duly authorised to make Inquiry into the several matters and things set forth in the aforesaid recited sections, and to conduct such last-mentioned inquiry in such place or places within the said Settlement as the Governor may appoint.

General Powers of Court or Tribunal.

II. The said Magistrate and such other person or persons as shall be appointed to be a Court or Tribunal as aforesaid shall conduct the inquiry into the said matters in such manner as to give any person against whom any charge is made full opportunity of making a defence either in person or otherwise; and for the purpose of conducting the said inquiry the said Magistrate and other person or persons appointed to be a Court or Tribunal as aforesaid shall have the following powers; (that is to say),

1. They may go on board any Ship in respect of which any inquiry shall be made, and may inspect the same or any part thereof, or any of the machinery, boats, equipments or articles on board thereof to which the provisions of this Ordinance apply:
2. They may enter and inspect any premises, the entry or inspection of which appears to them to be requisite for the purpose of the report which they are by this Ordinance directed to make:
3. They may, by summons under the hand of any one or more of the persons constituting any such Court or Tribunal, require the attendance of all such persons as they shall think fit to call before them, and examine for the purpose of such inquiry, and may require answers or returns to any inquiries they shall think fit to make:

4. They may enforce the production of all books, papers, or documents, which they may consider important for such purpose:
5. They may administer oaths, or may in lieu of requiring or administering an oath, require every person examined by them to make and subscribe a declaration of the truth of the statements made by him in his examination:

And every witness so summoned as aforesaid shall be allowed such expenses as would be allowed to any witness attending on subpœna to give evidence in a civil cause before the Supreme Court of this Settlement; and every such person who refuses to attend as a witness before such Magistrate and other person or persons appointed to be a Court or Tribunal as aforesaid, after having been required so to do in the manner hereby directed, and after having had a tender made to him of the expenses (if any) to which he is entitled as aforesaid, or who refuses or neglects to make any answer, or give any return, or to produce any document in his possession, or to make or subscribe any declaration which the said Magistrate and other person or persons appointed to be a Court or Tribunal as aforesaid are hereby empowered to require, shall for each such offence incur a penalty not exceeding Ten pounds.

Persons proventing Members of Court or Tribunal from exercising powers, shall incur a penalty not exceeding £20.

III. Any person or persons who shall prevent the said Magistrate and such other person or persons as shall be appointed to be a Court or Tribunal as aforesaid or any of them, from executing any of the powers conferred upon them by this Ordinance, or who shall obstruct or interfere with such Magistrate and such other person or persons appointed to be a Court or Tribunal as aforesaid or any of them, whilst executing any of the powers conferred upon them by this Ordinance, shall incur a penalty not exceeding Twenty pounds.

Power of cancelling or suspending certificate of master or mate, vested in the Court hereinabove appointed.

IV. The power of cancelling or suspending the certificate of a master or mate by the said two hundred and forty-second section of "The Merchant Shipping Act, 1854," conferred on the Board of Trade, shall vest in and be exercised by the Court or Tribunal duly authorised by this Ordinance, to make Inquiry into the several matters and things recited or referred to in the first section of this Ordinance; and further such power shall extend to cancelling or suspending the certificates of Engineers in the same manner as if "Certificated Engineer" or "Certificated Engineers" were inserted throughout the said section of "The Merchant Shipping Act, 1854," after "master" or "masters."

Power of cancellation or suspension to extend to certificates of Engineers.

Sentence of suspension or cancellation of certificate and proceedings thereupon.

V. Every such Court or Tribunal shall, at the conclusion of the case, or as soon after as possible, state, in open Court, the decision to which it may have come with respect to cancelling or suspending Certificates, and shall, with all convenient despatch transmit the proceedings in such Inquiry, together with their decision to the Governor or other Officer for the time being administering the government of this settlement; and no such decision shall take

Power of Governor to direct re-consideration of decision.

Report to be made to Board of Trade.

effect unless it be confirmed by the Governor ([a]) or other Officer as aforesaid who may, if he shall think fit, direct such Court or Tribunal to take further evidence, or to re-consider such decision; and such Court or Tribunal shall in all cases send a full Report upon the case with the evidence to the Board of Trade, and shall also, if it determine to cancel or suspend any certificate, forward such certificate or any directions it may have given in reference thereto to the Board of Trade with their Report, so that the said Board may exercise the powers conferred upon it by paragraph 4, section twenty-three of "The Merchant Shipping Act Amendment Act, 1862," aforesaid.

Statement of the case to be furnished to owner of certificate twenty-four hours before commencement of Inquiry.

VI. No certificate shall be cancelled or suspended unless a copy of the Report or Statement of the case upon which the investigation is ordered, has been furnished to the owner of the certificate at least twenty-four hours before the commencement of the investigation.

Certificate to be delivered to the Court.

VII. Every master or mate or Engineer whose certificate is or is to be ([b]) suspended or cancelled in pursuance of this Ordinance shall, upon demand of the said Court or Tribunal, deliver his certificate to such Court or Tribunal by which the case is investigated or tried, or if not demanded by such Court or Tribunal, shall, upon demand, deliver it to the Board of Trade, or as such Court or Tribunal or Board of Trade may direct in writing, and in default shall for each offence incur a penalty not exceeding Fifty pounds.

Penalty shall be recoverable from goods and chattels of person fined.

VIII. Any penalty imposed by any Court or Tribunal under this Ordinance shall be recoverable from and levied upon the goods and chattels, if any, of the person on whom such penalty shall be imposed, in a summary way without any writ, upon the order in writing, however, of the said Court or Tribunal; and in default of payment of any such penalty the person so making default shall be imprisoned by the said Court or Tribunal for any term not exceeding three months with or without hard labour, unless during such imprisonment, the said penalty shall be paid, or otherwise recovered from and levied upon the goods and chattels as aforesaid, whereupon the person fined and imprisoned shall be released and discharged from prison.

Short title.

IX. This Ordinance may be cited as "The Naval Courts of Inquiry Ordinance, 1873."

GEORGE BERKELEY, *Governor-in-Chief.*

Passed in the Legislative Council, this 14th day of November, in the year of our Lord One thousand eight hundred and seventy-three.

JACOB WM. LEWIS,

Clerk of Legislative Council.

([a]) But see Merchant Shipping (Colonial) Inquiries Act, 1882, s. 7.

([b]) But see Shipping Casualties Investigations Act, 1879, s. 3.

SOUTH AUSTRALIA.

Anno quadragesimo quarto et quadragesimo quinto Victoriæ Reginæ.
No. 237. *Marine Board and Navigation Act.*

A.D. 1881.

* * * * * *

An Act to consolidate and amend the Acts relating to the Marine Board, and to amend the Laws relating to Merchant Shipping and Seamen, and for other purposes.

[*Reserved, November,* 18*th*, 1881.]

Preamble.

WHEREAS it is expedient to consolidate and amend the Acts relating to the Marine Board, and to amend the laws relating to merchant shipping and seamen: Be it therefore enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:—

Short title.

1. This Act may be for all purposes cited as the "Marine Board and Navigation Act, 1881."

* * * * * *

Interpretation.

3. In the construction and for the purposes of this Act, unless the same would be inconsistent with the subject-matter or context, the words and expressions following shall have the respective meanings hereinafter assigned to them (that is to say):—

* * * * * *

"Collector of Customs" shall include the principal officer of Customs for the time being in any port in the province:

* * * * * *

"Harbour master" shall mean the officer of the Marine Board charged with the administration of this Act at any port of the province, and of the By-laws or Regulations made thereunder:

* * * * * *

"Justice" shall mean any Justice of the Peace for the said province:

* * * * * *

"Master" shall include every person (except a pilot) having command or charge of any ship:

"Pilot" shall mean any person not belonging to a ship who has the conduct thereof:

"Port" shall include harbour, haven, roadstead, channel, and navigable creek or river:

* * * * * *

"Seamen" shall include every person (except masters, pilots, and apprentices duly indentured and registered) employed in any capacity on board any ship:

"Secretary" shall mean the Secretary of the Marine Board

appointed under this Act, and shall include any officer for the time being duly authorized to act in that capacity:

"Ship" shall mean and include every description of vessel used in navigation not propelled by oars:

* * * * * *

"Tidal water" shall mean any part of the sea or river within the ebb and flow of the tide at ordinary spring tides:

* * * * * *

"The Board" or "the said Board" shall mean the Marine Board of South Australia as constituted by this Act:

"The Treasurer" shall mean the Treasurer of the said province:

"Shipping casualty" shall include loss, abandonment, collision, accident, damage, and grounding:

"The Merchant Shipping Act, 1854" shall mean the Act of Parliament of the United Kingdom of Great Britain and Ireland bearing that name:

* * * * * *

Incorporation, Constitution, and General Powers of the Marine Board.

Existing Marine Board.

6. Until the first appointment of the President and Wardens of the Marine Board of South Australia under the provisions of this Act, the Marine Board of South Australia as heretofore existing by virtue of the "Marine Board Act of 1860," and Acts amending the same, shall be the Board within the meaning of this Act, but upon such appointment shall be dissolved.

Incorporation of Marine Board.

7. For the purpose of carrying into effect the provisions of this Act, there is hereby constituted a Board to be called the Marine Board of South Australia, to consist of a President and seven Wardens, who shall be a corporate body and have perpetual succession, and of whom any four shall form a quorum. The said Board shall have a common seal, and shall have inscribed thereon the words "The Marine Board of South Australia," with such device as the Governor may approve. At all meetings of the Board the President shall have a deliberative as well as a casting vote.

Appointment of wardens.

8. The Governor shall appoint eight persons to be the President and first Wardens of the said Board, and the said Wardens shall hold their office for a period of three years from the date of the first appointment under this section. On the expiration of such three years, and on the expiration of every succeeding three years, the Governor shall in like manner appoint seven persons to be Wardens of the said Board, who shall hold their office for a period of three years.

* * * * * *

Powers of Board to be exercised within

19. The powers, authorities, and jurisdiction of the Board shall extend, and be exercisable in and over the limits of the said province,

and the dependencies thereof, and to the distance of one nautical league to seaward from low water-mark along the coast line of the said province or of such dependencies.

one league to seaward.

20. The Board may, with the consent of the Treasurer, appoint and employ such Secretary, engineers, shipwright surveyors, engineer surveyors, clerks, examiners, messengers, and other officers or persons, except solicitors, at such reasonable salary, pay, or reward as to such Board may seem meet, and may, from time to time, with the like consent, dismiss and discharge such officers or persons, or any of them, and appoint others in their place: Provided that the salaries or rewards of all persons appointed and employed by such Board under the authority of this Act shall be annually voted by Parliament.

Board may appoint officers.

* * * * * *

30. The Board may appoint any person to act as an inspector to report to them upon the following matters, that is to say:—

Board may appoint inspectors.

I. Upon the nature and causes of any accident or damages which any ship has sustained or caused, or is alleged to have sustained or caused:

II. Whether the provisions of this Act, or any regulations made under or by virtue of this Act, have been complied with:

III. And generally upon any matter whatsoever in relation to which jurisdiction, authority, or power is by this Act conferred upon the Board.

31. The Board, and any Warden or other person deputed to act in their behalf, and every inspector and surveyor duly appointed, shall have and exercise the following powers, that is to say:—

Powers of Board, inspectors, and surveyors.

I. They may, at all reasonable times, go on board any ship or vessel of whatsoever description, to which any of the provisions of this Act extend, for the purpose of examining the hull and machinery, and making any report thereon required by the said Board:

II. They may inspect any boat's equipment, or materials on board or belonging to any such ship or vessel to which the provisions of this Act extend:

III. They may go on board any such ship or vessel and inspect the same, for the purpose of inquiring into or reporting upon the nature and causes of any accident or damage which such ship or vessel has sustained or caused, or is alleged to have sustained or caused:

IV. They may enter and inspect any premises the entry or inspection of which may appear to them requisite for the purpose of any report:

V. They may, by summons under their hand, require the attendance of all such persons as they think fit to call before them on any Inquiry or report authorised by the

Board, and may require answers or returns to any inquiries they may think fit to make:

VI. They may require and enforce the production of all books, papers, log-books, certificates, accounts, agreements, or other documents relating to such Inquiry or report:

VII. They may administer oaths, or in lieu thereof require any person examined to make and subscribe a statutory declaration of the truth of the statements made in his examination.

Witnesses to be allowed expenses.

32. Every witness summoned as aforesaid shall be paid such expenses as in the opinion of the Board Warden, or other person deputed to act in their behalf, inspector or surveyor would be allowed to a witness if attending upon subpœna to give evidence before the Supreme Court, and no dispute as to the sufficiency of such expenses shall warrant such witness in disobeying such summons, or in refusing to submit to such examination; but such dispute shall be referred by the Board to the Master of the Supreme Court, who, on a request made to him for that purpose under the hand of the secretary, shall ascertain and certify the proper amount of such expenses; and every person who refuses to attend as a witness upon any report or Inquiry to be held under the provisions of this Act or before any such inspector or surveyor, after having been required so to do in the manner hereby directed, and after having had a tender made to him of the expenses (if any) to which he is entitled as aforesaid, or who refuses or neglects to make any answer, or to give any return, or to produce any document in his possession, or to make or subscribe any declarations which any such inspector or surveyor is hereby empowered to require, shall for every such offence incur a penalty not exceeding Twenty Pounds.

Penalty for refusing to give evidence.

Power to enforce attendance of witnesses.

33. If it shall upon oath be established to the satisfaction of any Justice, that any witness who has been summoned to attend upon any report, investigation, or inquiry under this Act, is about to quit the province, or refuses to attend upon such report, investigation, or inquiry, or that any person believed to be a material witness upon any such report, investigation, or inquiry, is evading service of any summons, or that it is probable that any such person will not attend to give evidence without being compelled so to do, it shall be lawful for such Justice by warrant under his hand to require all peace officers to bring up such witness or person upon such report, investigation, or inquiry, and in the meantime to lodge such witness or person in Her Majesty's Gaol at Adelaide, or in such other gaol as may be named in the said warrant, unless and until he shall have given sufficient security by way of bond or recognizance to the satisfaction of a Justice to secure his attendance.

Penalty for obstructing inspectors or surveyors in the

34. Every person who wilfully impedes any such inspector or surveyor appointed as aforesaid, or any Warden deputed by the Board, or any person on whom by this Act the powers of an

inspector or surveyor are conferred, in the execution of his duty, whether on board any ship or elsewhere, shall incur a penalty not exceeding Ten Pounds, and may be seized and detained by such inspector, surveyor, or other person, or by any person or persons whom he may call to his assistance, until such offender can be conveniently taken before some Justice or other officer having proper jurisdiction.

execution of their duty.

35. The Board may exercise the following powers, that is to say:—

Marine Board may inspect documents and muster crews.

I. They may require the owner, master, or any of the crew of any ship to produce any log-books or other documents relating to such ship or her crew or any member thereof in their respective possession or control:

II. They may require any such master to produce a list of all persons on board his ship, and take copies of such log-books or documents, or of any part thereof:

III. They may muster the crew of any such ship:

IV. They may summon the master or any seaman to appear and give any explanation concerning such ship or her crew, or the said log-books or documents.

36. If, upon requisition duly made by the Board, any person refuses or neglects to produce any such log-book or document as he is hereinbefore required to produce, or to allow the same to be inspected or copied as aforesaid, or impedes any such muster of a crew as aforesaid, or refuses or neglects to appear or give any explanation which he is hereinbefore required to give, or knowingly misleads or deceives the Board, he shall for each such offence incur a penalty not exceeding Twenty Pounds.

Penalty for refusing to produce documents, &c.

* * * * * *

Discipline.

133. If the Board has reason to believe that any master, mate, or engineer is, from incompetency or misconduct, unfit to discharge his duties, or if at any time complaint is made to the Board with reference to any master, mate, or engineer holding a certificate of competency or service issued by the Board of Trade of the United Kingdom, or by the Board, to the effect that such certificated officer is, by reason of incompetency, drunkenness, tyranny, or misconduct, unfit to discharge his duties, the Board may order an inquiry to be held before a Court of Marine Inquiry into the conduct of such officer.

Board may order Inquiry.

Court of Marine Inquiry.

134. For the purposes of this Act, there is hereby constituted a court or tribunal, under the name of the "Court of Marine Inquiry." Such Court shall consist of the Judges of the Supreme Court of the province, all Special Magistrates of the province, and the nautical and engineering Assessors appointed by the Governor as hereinafter directed. The Governor may appoint any number of persons who

Constitution of Court of Marine Inquiry.

in his opinion are possessed of nautical or engineering skill to be nautical or engineering assessors for the purposes of this Act, such assessors to be appointed from a list of persons approved of as eligible, and furnished from time to time by the Marine Board.

Court of Marine Inquiry to be a corporation.

135. The Court of Marine Inquiry shall be a Corporation with perpetual succession and a common seal.

Duties of Court of Marine Inquiry.

136. The Court of Marine Inquiry is hereby authorised—

I. To make inquiry into charges of incompetency or misconduct on the part of masters, certificated engineers, and mates of ships, holding certificates issued by the Board of Trade of the United Kingdom, and also as to shipwrecks and other casualties affecting ships, and for that purpose to exercise all powers given by the 242nd section of "The Merchant Shipping Act of 1854," and the 23rd section of the Act of Parliament of the United Kingdom of Great Britain and Ireland, known as the "Merchant Shipping Amendment Act, 1862" (which sections are for convenience set forth in the Schedule A hereto) to the Court or Tribunal mentioned in sub-section 5 of the former:

II. To hold any investigation which may be directed by the Board into the alleged incompetency or misconduct of any master, mate, or engineer holding a certificate, whether of competency or service, issued by the Board, and to cancel or suspend any such certificate held by a master, mate, or engineer, who, upon any such investigation, shall—

(*a.*) Be found guilty of any act of gross misconduct, drunkenness, or tyranny:

(*b.*) Be found to be incompetent:

(*c.*) Be found to have occasioned, by his wrongful act or default, the loss, abandonment of, or serious damage to, any ship, or loss of life:

(*d.*) Be found to have been convicted of any offence, for which in the opinion of the said Court, his certificate should be cancelled or suspended.

III. To hold any investigation into a shipping casualty under the fourth part of this Act.

Quorum of Court of Marine Inquiry.

137. For the purpose of sub-section I. of the last preceding section, a quorum of the Court of Marine Inquiry shall consist—

(*a.*) In cases where it is sought to cancel or suspend a certificate of a master, mate, or engineer, issued by the Board of Trade of the United Kingdom, on the grounds of misconduct, including drunkenness, tyranny, or misconduct or incompetency, not contributing to a shipping casualty, of one or more of the Judges of the Supreme Court:

(*b.*) In all other cases where it is sought to cancel or suspend a certificate of a master, mate, or engineer, issued by the Board of Trade of the United Kingdom, of at least one

Judge of the Supreme Court, and two nautical or engineering assessors, respectively, according as the Inquiry is into the incompetency or misconduct of a master or mate, or of an engineer, respectively.

For the purpose of sub-section II. of the last preceding section, a quorum shall consist of a Judge of the Supreme Court and two nautical or engineering assessors, or a Special Magistrate and two nautical or engineering assessors, the assessors to be nautical or engineering, according as the inquiry is into the incompetency or misconduct of a master or mate, or of an engineer, respectively.

For the purposes of sub-section III. of the last preceding section, a quorum shall consist of a Judge of the Supreme Court and two nautical or engineering assessors, or, of a Special Magistrate and two nautical or engineering assessors respectively: Provided that in all cases in which it would be competent for the said Court upon any such investigation to suspend or cancel any certificate issued by the Board of Trade of the United Kingdom a quorum shall consist of a Judge of the Supreme Court and two nautical or engineering Assessors respectively.

President of Court of Marine Inquiry.

138. The Chief Justice, if he be present, or if he be not present, the Senior Judge of the Supreme Court present, or if no Judge of the Supreme Court be present, then the Special Magistrate of longest standing present, shall be the President of the Court of Marine Inquiry.

Judgment of the Court of Marine Inquiry.

139. At the close of every inquiry or investigation before the Court of Marine Inquiry, the judgment of the Court shall be delivered by the President in open Court, and such judgment shall (except where a Judge of the Supreme Court shall sit alone) be the judgment of the majority of the Court, and for the purpose of ascertaining such majority the President shall have a casting as well as a deliberative vote. Except where a Judge shall sit alone, one nautical or engineering assessor shall concur in the judgment of the Court. The President shall, in every case, forward to the Board the judgment of the Court, together with the evidence, and it shall be competent for any member of the Court, who may dissent from the judgment, to forward to the Board, in writing, his reason for so dissenting.

Powers of Court of Marine Inquiry.

140. The Court of Marine Inquiry shall be a court of record, and for the purpose of any inquiry or investigation shall have all the powers given by this Act to an inspector or surveyor appointed by the Board, and, as far as relates to the summoning of parties and compelling the attendance of witnesses, shall have all the powers ordinarily exercised by the Supreme Court in any civil or crimimal proceeding.

Clerk of Court of Marine Inquiry.

141. The Secretary of the Marine Board for the time being shall be the Clerk of the Court of Marine Inquiry, and shall have the custody of the common seal thereof: And all summonses

whether to witnesses or parties, notices and documents, issued under the hand of the Clerk of the Court of Marine Inquiry, and sealed with the seal thereof, shall be deemed to be issued by and under the authority of the Court of Marine Inquiry.

Place of sitting.

142. The Court of Marine Inquiry shall sit in such suitable place or places as may from time to time be determined by the Governor of the province.

Rules may be made.

143. The Judges of the Supreme Court, or any two of them, may make rules for the conduct and procedure of the Court of Marine Inquiry, and for fixing the mode and rotation in which, and the persons by whom the members of the said Court shall be summoned, and imposing penalties on members of the said Court for non-attendance after being duly summoned, and from time to time alter or revoke the same. All such rules shall be under the hands of the Judges making the same, and the seal of the Supreme Court, and shall be published in the *Government Gazette*, and take effect from the date of such publication. Until such rules are made, the Supreme Court or any Judge thereof shall, at the request of the Board, give such directions as may seem fit for the conduct and procedure of and in any particular case.

Certificate to be delivered up.

144. Every master, mate, or engineer, whose certificate is suspended or cancelled in pursuance of this Act, or of "The Merchant Shipping Act, 1854," or any amendment thereof, shall, upon demand of the Court of Marine Inquiry, deliver his certificate to the Court, who shall forward the same to the Board, or if it is not demanded by the Court, shall, upon demand, deliver the same to the Board, or as they may direct; and every master, mate, and engineer who shall fail to comply with the provisions of this section shall, for each such offence, incur a penalty not exceeding Fifty Pounds: Provided that it shall be lawful for the Board at any subsequent time to grant any person whose certificate (being a certificate granted by the Board) has been cancelled, a new certificate of the same or any lower grade.

* * * * * *

Wrecks, Casualties, and Salvage.

Accidents.

Accidents to ships to be reported to Board.

223. In any of the cases following, that is to say:—

I. Whenever any ship is lost, abandoned, or has sustained damage affecting her seaworthiness or her efficiency, either in her hull or in any part of her machinery, on or near the coast, or within any tidal water, or on any navigable river of the Province of South Australia:

II. Whenever any ship, by collision or otherwise, causes the loss of or damage to any other ship on or near the coast, or within any tidal water, or on any navigable river of the said province:

III. Whenever, by reason of any casualty or accident happening to or on board of any ship on or near such coast, or within any tidal water, or any navigable river in the said province, loss of life or any serious injury to any person ensues:

IV. Whenever any ship has run aground on or near such coast, or within any tidal water, or on any navigable river of the said province:

V. Whenever any loss, abandonment, collision, accident, casualty, damage, or grounding as aforesaid happens to any ship outside the limits of the said province, the master whereof arrives in the said province without having (subsequent to such loss, abandonment, collision, accident, casualty, damage, or grounding) been in the United Kingdom or any British possession, and not having previously reported the circumstances to the proper officer or department in the said United Kingdom or British Possessions, the onus of proving which shall be upon the master or owner thereof:

The master or owner shall, within twenty-four hours after the happening of any one of the above events, or as soon thereafter as possible, send to the Board, by letter, signed by such master or owner, a report containing full particulars of such loss, abandonment, accident, casualty, damage, or grounding, and of the probable occasion thereof, stating the name and official number (if any) of the ship, the port to which she belongs, the names of the master and mates and the numbers of their certificates (if any), and, if practicable, the place where she is; and if such master or owner neglect so to do, he shall, for such offence, incur a penalty not exceeding Fifty Pounds.

Notice to be given of apprehended loss of ship.

234. If the managing owner, or, in the event of there being no managing owner, the agent of any ship, have reason, owing to the non-appearance of such a ship, or to any other circumstance, to apprehend that such ship has been wholly lost, he shall, as soon as conveniently may be, send to the Board notice, in writing, of such loss and of the probable occasion thereof, stating the name of the ship and her official number (if any), and the port to which she belongs; and if he neglect to do so within a reasonable time he shall incur a penalty not exceeding Fifty Pounds.

* * * * * *

Inquiries into Shipping Casualties.

Inquiry may be instituted by Board.

236. Whenever any shipping casualty happens on or near the coasts, or within any tidal water, or on any navigable river of the said province, and also whenever the same happens, or is supposed to have happened, outside the said limits, and any evidence can be obtained in the said province as to the circumstances under which the ship which has suffered such shipping casualty proceeded to sea or was last heard of, the Board, or some person appointed for

the purpose by the Board, shall make inquiry respecting such shipping casualty, and such person shall, for the purpose, have all the powers and remedies given by this Act to inspectors appointed by the Board.

Investigation before the Court of Marine Inquiry.

237. If it appears to the Board or such person or persons as aforesaid, either upon or without preliminary inquiry as aforesaid, that an investigation into any loss, abandonment, collision, accident, casualty, damage, or grounding (in this Act called a shipping casualty) is requisite or expedient, the Board shall refer the same to the Court of Marine Inquiry, who shall thereupon hold an investigation.

Person charged to have opportunity of making a defence.

238. Every investigation into a shipping casualty shall be conducted in such manner that, if a charge is made against any person, that person shall have an opportunity of making a defence. No certificate, whether of competency or service of any master, mate, or engineer, and whether issued by the Board of Trade of the United Kingdom or by the Board, shall be cancelled or suspended unless a copy of the report, or a statement of the case upon which the inquiry or investigation is ordered, has been furnished to the owner of the certificate before the commencement of the inquiry or investigation.

Costs of such Investigation.

239. The Court of Marine Inquiry may make such order with respect to the costs of any such Investigation or any portion thereof as they may deem just, and such costs shall be paid accordingly, and shall be recoverable in a summary manner; and the Board may, if in any case they think fit so to do, pay the expense of any such investigation.

Inquiries relating to missing ships.

240. Whenever a ship has been lost or is supposed to have been lost, and any evidence can be obtained in the province as to the circumstances under which she proceeded to sea or was last heard of, the Board (without prejudice to any other powers) may, if they think fit, cause an inquiry to be made or an investigation to be held, and all the provisions of this Act, so far as the same can be made applicable and the circumstances of the case permit, shall apply to any such Inquiry or Investigation.

Re-hearing of Inquiries and Investigations.

241. Where an inquiry or investigation has been held by the Court of Marine Inquiry under this Act (other than an inquiry under section 136, sub-section I.), the Board may, in any case, and shall, if new and important evidence which could not be produced at such inquiry or investigation has been discovered, or for any other reason there, has, in their opinion, been grounds for suspecting a miscarriage of justice, order that the case be re-heard, either generally or as to any part thereof.

* * * * * *

Legal Procedure.

Act to be construed as an Act relating to the

368. This Act shall be and be construed as an Act relating to the Customs, trade, and navigation, and all rights, remedies, enact-

ments, and provisions of the law for the time being in force within the said province, relating to the Customs, trade, and navigation, shall, so far as applicable and not inconsistent herewith, apply to all persons and things, and to all forfeitures, penalties, seizures, and other proceedings under this Act, as if the same were expressly herein inserted.

Customs, trade, and navigation.

369. The offences hereinafter mentioned shall be punished and penalties recovered in manner following, that is to say :—

Punishment of offences and recovery of penalties.

* * * * * *

VI. No conviction or order under this Act shall be quashed or removed by *certiorari* or otherwise into the Supreme Court for want of form.

* * * * * *

371. In all cases where any district within which any Court, or Justice, or other Magistrate, has jurisdiction, either under this Act or under any other Act, or otherwise howsoever for any purpose whatever, is situate on the coast of any sea, or abutting in or projecting into any bay, channel, lake, river, or other navigable water, every such Court, Justice, or Magistrate, shall have jurisdiction over any ship or boat being on, or lying, or passing off, such coast, and within the limits of the said province, or being in or near such bay, channel, lake, river, or navigable water as aforesaid, and over all persons on board such ship or boat, or for the time being belonging thereto, in the same manner as if such ship, boat, or persons were within the limits of the original jurisdiction of such Court, Justice, or Magistrate.

Jurisdiction over ships lying off the coasts.

372. In all cases where any Court, Justice, or other Magistrate, has power to make an order directing payment to be made of any seaman's wages, penalties, or other sums of money, then, if the party so directed to pay the same is the master or owner of a ship, and the same is not paid at the time and in manner prescribed in the order, the Court, Justice, or other Magistrate who made the order, may, in addition to any other powers they or he may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress or pounding and the sale of such ship and her tackle.

Sums ordered to be paid leviable by distress on ship.

* * * * * *

376. Where any order, notice, statement, or document requires, for the purpose of any provisions of this Act, to be served on the master of a ship, the same shall be served, where there is no master and the ship is in the province, on the managing owner of the ship; or if there is no managing owner, on some agent of the owner residing in the province; or where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

Service of order on master

Any such order, notice, statement, or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or, in case of

a master, by leaving it for him on board the ship with the person being or appearing to be in command or charge of such ship.

Penalty on obstructing service on master of ship.

377. Any person who obstructs the service of any order, notice, statement, or document, on the master of a ship, shall incur a penalty not exceeding Ten Pounds, and if the owner or master of the ship is party or privy to such obstruction, he shall be guilty of a misdemeanour.

* * * * * *

I reserve this Act for the signification of the Queen's pleasure.

WM. F. DRUMMOND JERVOIS,

Governor.

STRAITS SETTLEMENTS.

ORDINANCE No. XXVI. OF 1870.

An Ordinance to amend the Law relating to Marine Courts of Inquiry.

[*9th December*, 1870.]

HARRY ST. GEORGE ORD,

Governor and Commander-in-Chief.

WHEREAS it is expedient to make better provision for holding inquiries and investigations into charges of incompetency and misconduct of Masters and Mates of Ships, and as to Shipwrecks and other Casualties affecting Ships: It is hereby enacted by His Excellency the Governor of the Straits Settlements, with the advice and consent of the Legislative Council thereof, as follows:—

Cases in which inquiries are to be instituted.

1. In any of the following cases, that is to say:—

(*a.*) Whenever the Governor has reason to believe that any Master, Mate, or Engineer of a British Ship is from incompetency or misconduct unfit to discharge his duties;

(*b.*) Whenever any such Ship is lost, abandoned, or materially damaged in or near the coasts of the Colony;

(*c.*) Whenever any such Ship causes loss or material damage to any other ship in or near such coasts;

(*d.*) Whenever by reason of any casualty happening to or on board of any such Ship in or near such coasts loss of life ensues;

(*e.*) Whenever any such loss, abandonment, damage, or casualty happens elsewhere, and any competent witnesses thereof arrive, or are found in the Colony;

Constitution of Court of Inquiry.

It shall be lawful for the Governor to appoint a Court of Inquiry for the purpose of examining into such charges and matters.

Every such Court shall consist of a Judge or Commissioner of a Civil Court of Summary Jurisdiction, or a Magistrate, and of not less than two nor more than four Assessors, of whom one shall be

the Master Attendant or Harbour Master of the Settlement, if present in the exercise of the duties of his office, or a Commissioned officer of Her Majesty's Navy if procurable.

Powers of Court as to holding inquiries, &c.

3. Every Court so appointed shall, in addition to the duties imposed and the powers conferred by the Imperial Merchant Shipping Act, 1854, as amended by the Imperial Merchant Shipping Act Amendment Act, 1862, for holding investigations into charges of incompetency and misconduct of Masters, Mates, and Engineers, of ships, and for holding investigations into Wrecks and other Casualties affecting Ships, and for cancelling or suspending Certificates of Competency and Service, of Masters, Mates, and Engineers of Ships, have the powers granted in the first part of the Imperial Merchant Shipping Act, 1854, to Inspectors appointed by the Board of Trade. The Court shall also have the several powers and duties which appertain by law to Magistrates of Police in their summary jurisdiction.

Jurisdiction of Vice-Admiralty Court reserved.

4. Nothing in this Ordinance shall be held in any way to affect the jurisdiction of the Vice-Admiralty Court of the Colony.

Indemnity.

5. No action, suit, or other proceeding at law or equity shall be brought against any person for any thing done or omitted to be done by him as a Member of a Court of Inquiry into any of the matters or charges hereinbefore mentioned convened heretofore by the Local Government at any of the Settlements.

Delegation.

6. All the powers in this Ordinance conferred on the Governor may, in his absence from any of the Settlements, be exercised by the Lieutenant-Governor at the Settlement, or by the Colonial Secretary at Singapore.

Short title.

7. This Ordinance may be cited as the Marine Court of Inquiry Ordinance, 1870.

Passed the Legislative Council, this 9th day of December, 1870.

H. F. Plow,
Clerk of Councils.

STRAITS SETTLEMENTS.

Ordinance No. VII. of 1879.

An Ordinance to amend Ordinance No. XXVI. of 1870.

[*7th August*, 1879.]

A. E. H. Anson,
Administrator.

Whereas it is expedient to amend the Marine Court of Inquiry Ordinance, 1870: It is hereby enacted by the Administrator of the Straits Settlements, with the advice and consent of the Legislative Council thereof, as follows:—

In section 1, clause (*b.*) of the Marine Court of Inquiry Ordinance, 1870, after the word "abandoned," the word "stranded" shall be inserted.

In section 1, clause (*e.*) of the Marine Court of Inquiry Ordinance, 1870, after the word "abandonment," the word "stranding" shall be inserted.

Passed this 7th day of August, 1879.

A. M. SKINNER,
Acting Clerk of Councils.

TASMANIA.

1874.

Anno tricesimo octavo Victoriæ Reginæ.

No. 2.

A.D. 1874.

An Act to constitute Courts of Enquiry into the Causes of Wrecks.

[18*th September*, 1874.]

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly in Parliament assembled, as follows:—

Short title.

1. This Act may be cited as "The Enquiry into Wrecks Act, 1874."

Commencement of Act.

2. This Act shall come into operation on the First day of October, One thousand eight hundred and seventy-four.

Interpretation.

3. In this Act—

"Police Magistrate," includes a Stipendiary Magistrate:

"Magistrate," includes Police and Stipendiary Magistrates.

Enquiries to be instituted in cases of wreck and casualty.

4. In any cases following, that is to say:—

1. Whenever any ship has been on fire, or is lost, stranded, abandoned, or materially damaged on or near the coasts of *Tasmania:*
2. Whenever any ship comes into collision with, or causes any loss or material damage to, any other ship on or near the coasts of *Tasmania:*
3. Whenever by reason of any casualty happening to or on board of any ship on or near the coasts of *Tasmania* loss of life ensues:
4. Whenever any such loss, abandonment, burning, stranding, damage, collision or casualty happens elsewhere, and any competent witnesses thereof arrive or are found at any place in *Tasmania:*

it shall be lawful for the principal officer of Customs, residing at or near the place where such loss, abandonment, burning, stranding, collision, damage, or casualty occurred on or near the coasts of *Tasmania*, but if elsewhere, at or near the place where such witnesses as aforesaid arrive or are found or can be conveniently examined, or for any other person appointed for that purpose by the Governor to make enquiry respecting such loss, abandonment, burning, stranding, collision, damage, or casualty.

5. For the purposes of such enquiry every such officer of Customs, and every such person appointed by the Governor, shall have the following powers; (that is to say)—

Powers of officer of Customs or person appointed by the Governor.

1. He may go on board any ship, and may inspect the same or any part thereof, or any of the machinery, boats, equipments, or articles on board thereof, and particularly the boats, equipments, or articles to which the provisions of "The Merchant Shipping Act, 1854," or any Act amending the same or passed for like purposes, or any Rules, Regulations, or Bye-laws made under such Act, or any of them, apply, not unnecessarily detaining or delaying her from proceeding on any voyage:
2. He may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make:
3. He may by summons under his hand require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers or returns to any enquiries he thinks fit to make:
4. He may require and enforce the production of all books, papers, or documents which he considers important for such purpose:
5. He may administer oaths, or may in lieu of requiring or administering an oath require any person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

Witnesses to be allowed expenses.

6. Every witness so summoned as aforesaid shall be allowed such expenses as would be allowed to a witness attending on subpœna to give evidence before the Supreme Court; and in case of any dispute as to the amount of such expenses the same shall be referred to the Registrar of the said Court, who on request made to him for that purpose under the hand of such officer of Customs, or person appointed by the Governor as aforesaid, shall ascertain and certify the proper amount of such expenses.

Penalty for refusing to give evidence.

7. Every person who refuses to attend as a witness, after having been required so to do in the manner hereby directed, and after having had a tender made to him of the expenses (if any) to which he is entitled as aforesaid, or who refuses or neglects to make any answer, or to give any return, or to produce any document in his possession, or to make or subscribe any declaration which any such officer of Customs, or other person appointed by the Governor, is hereby empowered to require as aforesaid, shall for each such offence incur a penalty not exceeding Twenty Pounds.

Penalty for obstructing officer of Customs, &c., in the execution of his duty.

8. Every person who wilfully impedes any such officer of Customs or person appointed by the Governor as aforesaid in the execution of his duty, whether on board any ship or elsewhere, shall incur a penalty not exceeding Twenty Pounds, and may be seized and

detained by such officer of Customs or other person, or by any person or persons whom he may call to his assistance, until such offender can be conveniently taken before some Justice of the Peace.

Formal investigation before Justices

9. If it appears to such officer or person as aforesaid, either upon or without any such preliminary enquiry as aforesaid, that a formal investigation is requisite or expedient, or if the Governor so direct, he shall apply to any Two Justices of the Peace, or to a Police Magistrate, to hear the case, and such Justices or Magistrate shall thereupon proceed to hear and try the same.

When formal investigation held, certificated officers to be supplied with copy of the report.

10. In the event of such officer or person as aforesaid, making application for a formal investigation as aforesaid, it shall be his duty to furnish a copy of the report or a statement of the case upon which he has made such application, to all such officers of the vessel or vessels with regard to which such investigation is to be held as hold, or are by law required to hold certificates either of competence or service, and such copy of the report or statement of the case must be furnished to such officers aforesaid before the commencement of such formal investigation.

Power of Justices or Stipendiary Magistrate.

11. Such Justices of the Peace or Magistrate shall, so far as relates to the summoning of parties, compelling the attendance of witnesses, and the regulation of the proceedings, have the same powers as if the same were a proceeding relating to an offence or cause of complaint upon which they or he have power to make a summary conviction or order or as near thereto as circumstances permit.

Officer of ship may be required to deliver certificate to be held until the close of enquiry.

12. It shall be lawful for such Justices or Stipendiary Magistrate to call upon the officers of any sailing or steam-vessel in respect of which such investigation is to be (a) or has been held, if such officers hold certificates of competence or service, whether the same be *Tasmanian* certificates or certificates issued by the British Board of Trade or by any Colonial authority, to produce and deposit the same in the custody of the Court; and if such officer shall fail to produce and deposit such certificate in the custody of the Court on being required so to do, he shall be liable to a penalty not exceeding Fifty Pounds.

In cases of collision, neglect to render assistance, on evidence of default on part of ship neglecting, punishable by cancellation of certificate.

13. In investigating cases of collision, special enquiry shall be made as to whether the person in charge of each ship has, so far as he could do so without damage to his own ship, crew and passengers (if any), rendered such assistance to the other ship, her master, crew, and passengers (if any), as was practicable and necessary in order to save them from any danger caused by the collision; and in case it shall be proved that the person in charge of either ship has failed to render such assistance as may be practicable or necessary, and no reasonable excuse for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by the wrongful act, neglect,

(a) But see Shipping Casualties Investigations Act, 1879, s. 3.

or default of the person so failing to render assistance; and such failure shall, if proved upon any investigation duly held under the provisions of this Act, be deemed to be an act of misconduct or default, for which the certificate (if any) of the person so failing may be cancelled or suspended.

Officer of Customs or other person to render assistance.

14. It shall be the duty of such officer of Customs, or other person appointed by the Governor as aforesaid, to superintend the management of the case, and to render such assistance to the said Justices or Magistrate as is in his power; and upon conclusion of the case, or as soon after as possible, the said Justices or Magistrate shall state in open Court the decision they may have come to on the whole case, and with respect to the cancellation or suspension of any certificate or certificates, and shall in all cases send a report to the Governor containing a full statement of the case and of their or his opinion thereon, accompanied by the evidence and such observations (if any) as they or he may think fit; and shall also, should they or he determine to cancel or suspend any certificate, forward such certificate (if produced in Court) to the Governor along with their or his report.

Power to appoint a nautical assessor.

15. In cases where nautical or engineering skill and knowledge or both are required, the Governor, or such principal officer of Customs, or such other person appointed by the Governor aforesaid, shall have the power, either at the request of such Justices or Magistrate, or without such request, to appoint some person or persons of nautical or engineering skill and knowledge or both to act as assessor or assessors to such Justices or Magistrate, and such assessor or assessors shall, upon the conclusion of the case, either signify his or their concurrence in the report of such Justices or Magistrate by signing the same, or if he or they dissent therefrom shall signify such dissent and his or their reasons therefor to the Governor.

Justices or Magistrate to decide as to cancellation or suspension of certificate.

16. When the said Justices or Magistrate shall after due inquiry decide that the loss, abandonment of, or serious damage to any ship, or loss of life has been caused by the wrongful act or default of any certificated officer, it shall be their or his duty to decide whether the certificate of any such officer shall be cancelled or suspended, and to decide for what period it is to be suspended, but such decision shall not be valid unless the requirements of Section Ten of this Act have been complied with; and provided that no certificate of any master or mate shall be cancelled or suspended unless at least one nautical assessor shall concur in the report of the Justices or Magistrate aforesaid; and no certificate of any engineer shall be cancelled or suspended unless at least one engineering assessor shall concur in such report.

Governor empowered to re-issue cancelled or suspended *Tasmanian* certificates, or to

17. It shall be lawful for the Governor at any time, if he thinks that the justice of the case requires it, to re-issue and return any *Tasmanian* certificate which has been cancelled or suspended, or to shorten the time for which it is suspended, or to grant a new

shorten time for which suspended, and to make recommendation to Board of Trade as to cancelled or suspended *British* certificates.

certificate of the same or any lower grade in place of any certificate which has been cancelled or suspended. It shall also be lawful for the Governor to recommend any such modification of any such sentence as aforesaid to the Board of Trade or any other *British* authority by whom the certificate which has been cancelled or suspended has been originally issued, and in the interim to issue a *Tasmanian* certificate of such grade as to him shall seem fit in lieu of such cancelled or suspended certificate.

Costs of investigation.

18. The said Justices or Magistrate may make such order with respect to the costs of any such investigation or any portion thereof as they or he may deem just, and such costs shall be paid accordingly, and shall be recoverable in the same manner as other costs incurred in summary proceedings before them or him. And the Governor may in any case he thinks fit cause the expense of any such investigation to be paid by the Colonial Treasury, and such assessors as aforesaid to be paid such remuneration as the Governor thinks fit.

Investigation to be reported to Board of Trade.

19. All proceedings taken in the course of any investigation held under this Act shall be transmitted through the Governor, as soon as possible after the conclusion of such investigation, to the Lords of the Committee of the Privy Council for Trade in *England*.

Application of Act.

20. This Act shall not apply to ships belonging to Her Majesty.

TOBAGO.

No. 14 of 1881.

Title.

An Ordinance to repeal "The Wrecks Inquiry Ordinance, 1880," *and to make other provisions for the Inquiry into the causes of wrecks occurring on the coasts of this Colony.*

[22*nd November*, 1881.]

Preamble.

Whereas Wrecks may take place on the coasts of this Colony, and at present no competent Tribunal exists by which the causes of and circumstances attending such Wrecks may be inquired into and investigated, and it is very desirable that such Tribunal should be established: Be it therefore Enacted and Ordained by the Governor of Tobago, by and with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as "The Wrecks Inquiry Ordinance, 1881."

Repeal of Ordinance of 1880.

2. "The Wrecks Inquiry Ordinance, 1880," is hereby repealed.

Magistrates to make inquiry respecting loss or abandonment or damage of ship.

3. Whenever any Ship is lost, abandoned, or materially damaged on or near the coasts of this Colony, it shall be lawful for the Police Magistrate of the Police District in or near which such loss, abandonment, or damage occurred to make inquiry respecting such loss, abandonment or damage. And he shall for that purpose have the following powers, that is to say:—

(1.) He may go on board such Ship and inspect the same.

(2.) He may, by summons under his hand, require the attendance of all persons as he thinks fit to call before him and examine for such purpose, and may require answers to any inquiries he thinks fit to make.

(3.) He may require and enforce the production of all books, papers, or documents which he considers important for such purpose.

(4.) He may administer Oaths, or in lieu thereof require every person examined by him to make and subscribe a Declaration of the truth of the statements made by him in his examination.

Penalty on witnesses for refusing or neglecting to make answer, &c.

Every person who refuses to attend as a witness when summoned, or who refuses or neglects to make any answer, or give any return, or to produce any document in his possession, or to make or subscribe any Declaration required of him under the authority of this Ordinance, shall for each offence incur a penalty not exceeding Ten Pounds; and any person may sue for such penalty, and proceedings for its recovery may be taken, and the same shall be appropriated under the Act entitled, "An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions within Tobago with respect to Summary Convictions and Orders." (17 Vict., c. 22.)

Magistrate to report to the Governor.

And upon the conclusion of the case the said Police Magistrate shall send in his report thereof to the Governor.

Governor on reading such report may direct a more formal investigation.

4. Should it appear to the Governor on reading such Report that a more formal investigation is requisite or expedient, he shall notify his opinion to such Police Magistrate, who shall thereupon associate with himself two or more persons to be nominated by the Governor, and shall together with them form a Court for the purpose of hearing the case. And the Court so formed shall proceed to hear and try the same, and shall for that purpose, so far as relates to the examining of parties, compelling the attendance of witnesses, and the conduct and regulation of the proceedings, have and exercise the same powers as if the same were a proceeding relating to an offence or cause of complaint upon which a Police Magistrate has power to decide summarily, or as near thereto as circumstances permit.

Attendance of witnesses compelled.

Report to be made to Governor upon the conclusion of the case.

And upon the conclusion of the case the said Court shall send in a Report to the Governor containing a full statement of the case and of their opinion thereon, accompanied by such Report or of Extracts from the evidence, and such observations as they may think fit.

Where nautical skill required, Governor may appoint a person of nautical skill and knowledge to act as Assessor to Court, &c.

5. In cases where nautical skill and knowledge are required the Governor shall have power, either at the request of such Court or at his own discretion, to appoint some person of nautical skill and knowledge to act as Assessor to such Court, and where the investigation in any case involves or appears likely to involve any question as to the cancelling or suspension of the certificate of a Master, Mate, or Engineer, the Governor shall appoint at least one Assessor having experience in the Merchant service to assist such Court. And every

Assessor shall upon the conclusion of the case either signify his concurrence in the Report of the Court by signing the same, or, if he dissents therefrom, shall signify such dissent and his reasons therefor to the Governor. And the Governor may pay from the Public Treasury to every Assessor such sum for his remuneration as the Governor may deem reasonable and just.

Costs.

6. The said Court may make such order with respect to the costs of any such investigation or any portion thereof as they may deem just, and such costs shall be chargeable and paid, and shall be recoverable in the same manner as other costs in summary proceedings before a Police Magistrate.

Certificate of Master, Mate, or Engineer not to be cancelled unless copy of report furnished, nor unless Assessor concur in report.

7. No certificate of any master, mate, or engineer shall be cancelled or suspended, on or by reason of any proceedings under this Ordinance, unless a copy of the Report or Statement of the case upon which the Investigation is ordered shall have been furnished to the Owner of the Certificate before the commencement of the Investigation, nor unless at least one Assessor having experience in the Merchant service expresses his concurrence in the Report.

TRANSVAAL.

HAS NO ORDINANCE RESPECTING WRECK INQUIRIES.

TRINIDAD.

No. 8, 9TH JUNE, 1883.

An Ordinance enacted by the Governor of Trinidad, with the advice and consent of the Legislative Council thereof

TO AMEND THE LAW AS TO MERCHANT SHIPPING.

S. FREELING,

[L.S.] *Governor.*

19th June, 1883.

BE it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council, as follows:—

Preliminary.

Short title.

1. This Ordinance may be cited as "The Merchant Shipping Ordinance, 1883." It shall not come into operation until a day to be fixed by the Governor by Proclamation, which day is in this Ordinance referred to as the commencement of this Ordinance.

Interpretation.

2. In the construction of this Ordinance the following terms shall have the respective meanings hereinafter assigned to them, that is to say:—

"Master," shall include every person (except a pilot) having command or charge of any ship;

"Receiver," shall mean any person appointed in pursuance of this Ordinance Receiver of Wreck;

"Ship," shall include every description of vessel used in navigation;

"Statute Adult," shall signify any person of the age of twelve years or upwards or two persons between the age of one and twelve years; and

"Wreck," shall include all jetsam, flotsam, lagan or derelict found in or on the shores of the sea or any tidal water.

Division of Ordinance.

3. This Ordinance is divided into four parts: the first part relating to unseaworthy ships; the second part to wrecks, casualties, and salvage; the third part to the passenger trade; the fourth part to miscellaneous matters.

* * * * * *

Service of order on master, &c.

5. Where any order, notice, statement, or document requires, for the purpose of any provisions of this Ordinance, to be served on the master of a ship, the same shall be served, where there is no master, on some agent of the owner residing in the Colony, or where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

Any such order, notice, statement, or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or in the case of a master by leaving it for him on board the ship with the person being or appearing to be in command or charge of such ship.

Any person who obstructs the service of any order, notice, statement, or document on the master of a ship, shall on conviction before a Stipendiary Justice of the Peace incur a penalty not exceeding ten pounds, and if the owner or master of the ship is party or privy to such obstruction he shall be guilty of a misdemeanour.

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The Second Part.

Wrecks, Casualties, and Salvage.

Inquiries into Wrecks, Casualties, Incompetency, and Misconduct.

Inquiries to be instituted in cases of wreck and casualty.

16. In any of the cases following, viz.:—

Whenever any ship is lost, abandoned, stranded or damaged on or near the coast of the Colony, or in the course of a voyage to a port within the Colony;

Whenever any ship causes loss or material damage to any other ship on or near such coast;

Whenever any ship causes loss or material damage to any other ship, and such ships are, or either of them is, in the course of a voyage to a port within the Colony;

Whenever by reason of any casualty happening to or on board of any ship on or near such coast, or in the course of a voyage to a port within the Colony, loss of life ensues;

Whenever any such loss, abandonment, stranding, damage or casualty happens elsewhere, and any competent witnesses thereof arrive or are found at any place in the Colony;

Whenever any such loss, abandonment, stranding, damage or casualty occurs in any part of the world to a British ship registered in the Colony:

It shall be lawful for the principal officer of Customs residing at or near the place where such loss, abandonment, stranding, damage or casualty occurred, if the same occurred on or near the coast of the Colony, but if elsewhere at or near the place where such witnesses as aforesaid arrive or are found or can conveniently be examined, or for any other person appointed for the purpose by the Governor, to make Inquiry respecting such loss, abandonment, stranding, damage or casualty.

Powers of officer making enquiry.

17. A principal officer of Customs, or person appointed for the purpose of making enquiry pursuant to this Ordinance, shall have the following powers, that is to say—

1. He may go on board any ship, and may inspect the same or any part thereof, or any of the machinery, boats, equipments, or articles on board thereof to which the provisions of this Ordinance apply, not unnecessarily detaining or delaying her from proceeding on any voyage;
2. He may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make;
3. He may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers or returns to any Inquiries he thinks fit to make;
4. He may require and enforce the production of all books, papers or documents which he considers important for such purpose;
5. He may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination:

And every witness so summoned as aforesaid shall be allowed such expenses as would be allowed to any witness attending on subpœna to give evidence before any Court of Record; and in case of any dispute as to the amount of such expenses the same shall be referred by the principal officer of Customs to a Judge of the Supreme Court, who, on a request made to him for that purpose under the hand of the said principal officer of Customs, shall ascertain and certify the proper amount of such expenses; and every person who refuses to attend as a witness before any such principal officer of Customs after having been required so to do in the manner hereby directed, and after having had a tender made to him of the

expenses (if any) to which he is entitled as aforesaid, or who refuses or neglects to make any answer, or to give any return, or to produce any document in his possession, or to make and subscribe any declaration which any such principal officer of Customs is hereby empowered to require, shall for each such offence incur a penalty not exceeding ten pounds.

Penalty on obstructing officer making inquiry.

18. Every person who wilfully impedes any principal officer of Customs or person making inquiry pursuant to this Ordinance in the execution of his duty, whether on board any ship or elsewhere, shall incur a penalty not exceeding ten pounds, and may be seized and detained by such principal officer of Customs or other person or by any person or persons whom he may call to his assistance until such offender can be conveniently taken before some Justice of the Peace or other officer having proper jurisdiction.

Penalty for false evidence.

19. Every person giving false evidence upon an oath administered under this Ordinance, or falsely making and subscribing any declaration required under this Ordinance, shall be liable to the pains and penalties of perjury.

Formal investigation before Justice.

20. If it appears to such Officer or person as aforesaid either upon or without any such preliminary inquiry as aforesaid, that a formal investigation is requisite or expedient, he shall apply to a Stipendiary Justice of the Peace to hear the case; and such Stipendiary Justice shall thereupon make order for such investigation and proceed to hear and try the case, and shall for that purpose, so far as relates to the summoning of parties, compelling the attendance of witnesses, and the regulation of the proceedings, have the same power as if the same were a proceeding relating to an offence or cause of complaint upon which he has power to make a summary conviction or order, or as near thereto as circumstances permit; and it shall be the duty of such Officer or person as aforesaid to superintend the management of the case, and to render such assistance to the Stipendiary Justice as is in his power; and upon the conclusion of the case, the Stipendiary Justice shall send a report to the Governor containing a full statement of the case and of his opinion thereon, accompanied by such report of or extracts from the evidence and such observations (if any) as he may think fit. The Governor shall forward every report sent to him under this section to the Colonial Office for transmission to the Board of Trade.

Assessors and procedure on formal investigation.

21. A Stipendiary Justice holding a formal investigation into a shipping casualty shall hold the same with the assistance of an assessor or assessors of nautical, engineering, or other special skill or knowledge, to be appointed by the Governor.

The Governor, when of opinion that the investigation is likely to involve the cancellation or suspension of the certificate of a master, mate, or engineer shall appoint not less than two persons having experience in the merchant service to be assessors.

Each assessor shall either sign the report made on the investigation, or report to the Governor his reasons for his dissent therefrom.

Costs of such Investigation.

22. The Stipendiary Justice may make such order with respect to the cost of such Investigation or any portion thereof as he may deem just, and such costs shall be paid accordingly, and shall be recoverable in the same manner as other costs incurred in summary proceedings before him; and the Governor out of the Colonial Treasury may, if in any case he thiuk fit so to do, pay the expense of any such investigation, and may pay to such assessor or assessors as aforesaid such remuneration as he thinks fit.

General power as to incompetency or misconduct.

23. If the Governor has reason to believe that any master, mate, or engineer is from incompetency or misconduct unfit to discharge his duties, he may, when the incompetency or misconduct has occurred on board of a British ship on or near the coasts of the Colony, or on board of a British ship in the course of a voyage to a port within the Colony, or when the incompetency or misconduct has occurred in any part of the world on board a British ship registered in the Colony, or when the master, mate, or engineer of a British ship who is charged with incompetency or misconduct on board of such British ship is found in the Colony, direct the Stipendiary Justice to institute an investigation, and such Stipendiary Justice shall conduct the investigation, and may summon the master, mate, or engineer to appear, and shall give him full opportunity of making a defence either in person or otherwise, and such Stipendiary Justice shall for the purpose of such investigation have all the powers given by section seventeen of this Ordinance to a principal Officer of Customs, and such Stipendiary Justice may make such order with respect to the costs of such investigation as he may deem just.

Power to Stipendiary Justice to suspend certificates.

24. A Stipendiary Justice making an investigation under this Ordinance may cancel or suspend the certificate of any master, mate, or certificated engineer whose conduct is called in question in the course of such investigation if it appears to such Stipendiary Justice that such master, mate, or certificated engineer has been guilty of any gross act of misconduct, drunkenness or tyranny, or that the loss, abandonment or stranding of, or serious damage to, any ship, or loss of life has been caused by his wrongful act or default: Provided that,

1. The Stipendiary Justice shall at the conclusion of the case or as soon afterwards as possible state in open court the decision to which he may have come with respect to cancelling or suspending certificates, and shall in all cases send the Governor a full report upon the case with the evidence, and shall also, if he determines to cancel or suspend any certificate, forward such certificate to the Governor, and such report and evidence together with the certificate (if

any) shall forthwith be forwarded by the Governor to the Board of Trade:

2. It shall be lawful for the Board of Trade, if they think the justice of the case requires it, to re-issue and return any certificate which has been cancelled or suspended, or to shorten the time for which it is suspended, or to grant a new certificate of the same or any lower grade in place of any certificate which has been cancelled or suspended:

3. No certificate shall be cancelled or suspended under this section, unless a copy of the report or a statement of the case upon which the investigation is ordered, has been furnished to the owner of the certificate before the commencement of the investigation, nor unless one assessor at least expresses his concurrence in such cancellation or suspension:

4. Every formal investigation into a shipping casualty shall be conducted in such manner that if a charge is made against any person, that person shall have the opportunity of making a defence:

5. Such Investigations shall be held in some public building or other suitable place not being a Court ordinarily used as a Police Court, unless no other suitable place is available.

Powers of Court of inquiry.

25. The Court or Tribunal authorised by sections twenty and twenty-three of this Ordinance to make enquiry or to hold investigations shall have the same jurisdiction as such Court or Tribunal would have had if such loss, abandonment, stranding, damage, or casualty, or incompetency, or misconduct had occurred within the ordinary jurisdiction of such Court or Tribunal, but subject to all provisions, restrictions, and conditions which would have been applicable if they had so occurred: Provided that no enquiry shall be held under this Ordinance into any loss, abandonment, stranding, damage, or casualty, or into any charge of incompetency or misconduct, which has once been the subject of such an enquiry and has been reported on by any competent Court or Tribunal in any part of Her Majesty's Dominions, or in respect of which the certificate of a master, mate, or engineer has been suspended or cancelled by a Naval Court, and provided also that where any enquiry has been commenced in the United Kingdom no enquiry shall be made in the same case under the authority of this Ordinance.

Power to require delivery of certificate.

26. Every master or mate or engineer whose certificate is suspended or cancelled in pursuance of this Ordinance shall upon demand of the Governor, or the Court or Tribunal by which the case is investigated or tried, deliver his certificate to him, or them, and such certificate shall be forwarded to the Board of Trade. If any master, mate, or engineer fails to deliver his certificate when required so to do under this section, he shall incur a penalty not exceeding Fifty Pounds.

Limitation of power to inquire.

27. So much of this Ordinance as relates to inquiries into wrecks, casualties, incompetency and misconduct shall not apply to any ships belonging to or in the service of Her Majesty or belonging to any Foreign Prince or State.

* * * * * *

Passed in Council this Ninth day of June in the year of our Lord one thousand eight hundred and eighty-three.

(Signed) A. C. Ross,
Clerk of the Council.

TURKS AND CAICOS ISLANDS.

In the year 1860 an Ordinance (No. 6) was passed, *inter alia*, to enable the Revenue officer to make preliminary Inquiries and to establish a Court to inquire into cases of wreck, but as it was deemed inexpedient that the Colony should be burdened with the entire expense of such Inquiries so much of the Ordinance as related to the matter was repealed by Ordinance No. 9 of 1861.

This Colony has, therefore, no Ordinance now in force relating to Wreck Inquiries.

VICTORIA.

Anno Vicesimo Octavo Victoriæ Reginæ.

No. CCLV.

An Act to Consolidate the Law relating to Passengers, Harbors and Navigation.

[*9th May*, 1865.]

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same, as follows, that is to say:—

Title of Act.

1. This Act shall come into operation on the first day of June, in the year of our Lord one thousand eight hundred and sixty-five; and shall be called and may be cited as "*The Passengers, Harbors and Navigation Statute*, 1865."

Interpretation of certain terms in this Act.

3. Nothing in this Act contained shall apply to any ship belonging to or in the service of Her Majesty; and in the construction and for the purposes of this Act and the several Parts thereof (if not inconsistent with the context or subject-matter) the following terms shall have the respective meanings hereinafter assigned to them (that is to say)—

"Master," shall include every person (except a pilot) having command or charge of any ship or vessel.

"Passenger," for the purposes of Part I. of this Act, shall include all passengers; but nothing in the said Part contained shall affect the provisions of any Act in force in Victoria relating to Chinese immigrants.

"Port officer," for the purposes of Part II. and III. of this Act, shall mean the person discharging the duty of port officer in the colony of Victoria.

"Port," for the purposes of Parts II. and III. of this Act, shall mean any port, harbour, haven, roadstead, channel, navigable creek or river.

"Quay," for the purposes of Parts II. and III. of this Act, shall mean any pier, jetty, quay, wharf, or landing-place.

"Ship," for the purposes of Part I. of this Act, shall include all British or foreign navigable vessels of any kind carrying passengers, except vessels plying from any one port in Victoria to any other port therein; and for the purposes of Parts II. and III. of this Act shall mean every description of navigable vessel, whether propelled by wind, steam, or any other power, and, for the purposes of Part V. of this Act shall include every description of vessel used in navigation not propelled by oars.

"Steamship," for the purposes of Part IV. of this Act, shall mean any navigable vessel propelled by steam trading to or from, or plying in any port, harbor, creek, or river in Victoria.

* * * * * *

"The Board," for the purposes of Part IV. and Part V. of this Act, shall mean the Victoria Steam Navigation Board; and any local board having jurisdiction in or over the harbour, place, or district within the limits of which it may be necessary to exercise any of the powers of this Act.

* * * * * *

Part IV.—Steam Navigation.

1.—*Constitution and Functions of Steam Navigation Board.*

Governor in Council to appoint a board to be called "The Victoria Steam Navigation Board."

76. The Governor in Council may nominate and appoint any number of persons not exceeding five (three of whom or any less number being a majority of such Board shall be a quorum) as and to be a board to be called "The Victoria Steam Navigation Board" with full power to carry out the provisions of this Part and of Part V. of this Act; and the Governor in Council may remove any members of the said board and appoint others and fix the amount of remuneration to be paid to members respectively; and also may constitute and appoint any number of persons not exceeding five (three of whom or any less number being a majority of such Board shall be a quorum) as and to be a local board for any port, harbor, place or district in the said colony at or in which it shall appear expedient that any such local board should be established, with power to act therein and carry out the provisions of this Part of this Act; and may further remove any members of such board and

Power to the Governor in Council to appoint local boards.

appoint others, and fix and alter the amount of remuneration to be paid to the members of any such board.

Sec. 77 was repealed by the Passengers, Harbors, and Navigation Statute, 1865, Amendment, sec. 2, which provides as follows :—

Powers of "The Victoria Steam Navigation Board" and of local boards.

2. The seventy-seventh section of "*The Passengers, Harbors, and Navigation Statute*, 1865," shall be and the same is hereby repealed, and in lieu thereof the following shall, from the passing of this Act, be and be deemed to be and may be cited as the seventy-seventh section of the said Statute (that is to say) :—"The Victoria Steam Navigation Board shall have power to carry out the provisions of this Part of this Act within the whole of Victoria, except within the limits for which such local board shall be constituted as aforesaid. The Victoria Steam Navigation Board is hereby constituted a court or tribunal authorised and empowered to make enquiry into charges of incompetency or misconduct on the part of masters or mates of ships, and as to shipwrecks or other casualties affecting ships, and generally to do all such acts and exercise all such powers as are mentioned in or are conferred by the two hundred and forty-second section of '*The Merchant Shipping Act*, 1854,' and the twenty-third section of '*The Merchant Shipping Act Amendment Act*, 1862.' Every such local board shall carry out all the provisions of this Part of this Act within the limits for which such local board shall be so constituted and appointed as aforesaid."

* * * * * *

Power for board to appoint and remove shipwright surveyors, &c., and fix rates of remuneration subject to the approval of the Governor.

88. The Victoria Steam Navigation Board may from time to time with the approval of the Governor in Council appoint such a number of fit and proper persons to be shipwright surveyors and engineer surveyors for the purposes of this Part and of Part V. of this Act at such ports or places as they think proper; and may from time to time with such approval as aforesaid remove such surveyors or any of them; and they may from time to time fix, alter or vary the rates of remuneration to be received by such surveyors.

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Accidents to be reported to Board.

91. Whenever any steamship has sustained or caused any accident occasioning the loss of life or any serious injury to any person, or has received any material damage affecting her seaworthiness or efficiency, either in her hull or any part of her machinery, the owner, master or other person having charge of such ship shall, within twenty-four hours after the happening of such accident or damage, or as soon thereafter as possible, transmit through the post-office to the board, by letter signed by the said master or other person, a report of such accident or damage and the probable occasion thereof, stating the name of the ship, the port to which she belongs and the place where she is. And if such master or other person neglect so to do, he shall for such offence be liable to a penalty not exceeding five pounds.

92. If the owner of any steamship have reason, owing to the non-appearance of such ship or to any other circumstance, to apprehend that such ship has been wholly lost, he shall as soon as conveniently may be send notice thereof in like manner to the board. And if he neglect so to do within a reasonable time, he shall for every such offence be liable to a penalty not exceeding five pounds.

Notice to be given of apprehended loss of steamships.

93. The board may, from time to time, whenever it seems expedient to them so to do, appoint any of the surveyors to be appointed by them as aforesaid or any other fit person as an inspector to go on board any ship reported to have sustained any damage as aforesaid, to report to them whether the provisions of this or of the next succeeding Part of this Act or the regulations made under or by virtue thereof have been complied with, and also whether the hull and machinery of such ship if the same be a steamship are sufficient and in good condition, or to report to them upon the nature and causes of any accident or damage which such ship has sustained or caused, or is said to have sustained or caused.

Board may send inspectors on board ships whenever necessary.

94. Any such inspector as aforesaid and also any person being a member of the board may go on board any steamship at all reasonable times and inspect the same or any part thereof or any of the machinery, boats, equipments, or articles on board thereof to which the provisions of this or the next succeeding Part of this Act or any of the regulations to be made by virtue thereof apply, not unnecessarily detaining or delaying the ship from proceeding on any voyage; and in all cases of accident or damage such inspector or other person may make such enquiries and require answers or returns thereto as to the nature, circumstances, and causes of such accident or damage as he thinks fit, and may by summons under his hand require the attendance of all persons whom he thinks fit to call before him in any question or matter connected therewith or relating thereto; and may administer oaths and examine such persons upon oath; and may require and enforce the production upon oath of all log-books, accounts, agreements, or other papers or writings in anywise relating to any such matter as aforesaid; or in lieu of requiring and administering an oath may require any person to make and subscribe a declaration of the truth of the matters respecting which he has been examined or interrogated. Provided always that no person shall be required in obedience to any summons from such inspector or other person to travel more than one mile from his actual abode at the time of receiving such summons unless such reasonable allowance for expenses in respect of his attendance to give evidence and of his journeys to and from the place where he may be required to attend for that purpose be made and tendered to him as would be allowed to any witness attending on subpœna to give evidence before the Supreme Court of the colony of Victoria; and in case of any dispute as to the amount of such expenses the same shall be referred by such inspector or other person to the

Powers of inspectors.

Proviso for expenses of witnesses.

officer of the said Supreme Court who is charged with the duty of taxing costs; and such officer shall on a request made to him for that purpose under the hand of such inspector or other person ascertain and certify the proper amount of such expenses.

Penalty for obstructing inspectors.

95. If any person wilfully impede such inspector, surveyor, or other person in the execution of any part of his duty whether on board any ship or elsewhere, every person so offending and all persons aiding and assisting therein may be seized and detained by such inspector, surveyor, or other person or by any person called to his assistance until such offender can be conveniently taken before some justice or other officer having proper jurisdiction. And every such offender, and also every person who refuses to attend as a witness before any such inspector or other person when required so to do in the manner hereby directed, or who refuses or neglects to make any answer or to give any return or to produce any document in his possession or to make or subscribe any declaration which such inspector or other person is hereby empowered to require as aforesaid, shall for each offence be liable to a penalty not exceeding five pounds.

* * * * * *

PART VII.—MISCELLANEOUS PROVISIONS.

Jurisdiction to be where the offence is committed and wherever offender is.

127. For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed and every cause of complaint to have arisen either in the place in which the same actually was committed or arose or in any place in which the offender or person complained against may be.

Service to be good if made personally or at abode or on board ship, &c.

128. Service of any summons or other process in any legal proceeding under this Act shall be deemed good service if made personally on the person to be served, or if made at his last known place of abode or business, or if made on board any ship to which he belongs and accompanied with a statement of the purport thereof to the person in command or appearing to be in command or charge of such ship.

Burden of proof that a ship is exempted.

129. If in any legal proceeding under this Act any question arise whether any ship is or is not within the provisions of this Act or of some particular Part thereof, such ship shall be taken to be within such provisions unless proof to the contrary is adduced.

* * * * * *

WESTERN AUSTRALIA.

ANNO DECIMO SEXTO VICTORIÆ REGINÆ.

No. 11.

An Ordinance to interpret and shorten the Language of Ordinances of the Governor and Legislative Council, and to render unnecessary repetitions therein.

Preamble.

WHEREAS it is expedient to shorten the language of Ordinances to be passed by the Governor and Legislative Council of the colony of

Western Australia, and to subject all such Ordinances to certain rules of interpretation: Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof:—

Ordinances may be amended or repealed in the same session.

I. That any Ordinance to be passed by the Governor and Legislative Council of Western Australia after the commencement of this Ordinance, may be altered, amended, or repealed in the same session of the Legislative Council, any law or usage to the contrary notwithstanding.

Sections without introductory words.

II. That all such Ordinances shall be divided into sections if there be more enactments than one, which shall be deemed to be substantive enactments, without any introductory words.

"Her Majesty," "month," "oath and affidavit."

III. That in all such Ordinances the words "Her Majesty" shall be understood to mean "Her Majesty, her heirs and successors," and that the word "month" shall be understood to mean "calendar month," unless words be added, showing that a lunar month is intended. That the words "oath" and "affidavit" shall be understood to include affirmation and declaration; and the word "swear," affirming and declaring in the case of persons by law allowed to declare or affirm instead of swearing.

Repealed Ordinances not to be revived.

IV. That whenever any Ordinance repealing in whole or in part any former Ordinance is itself repealed, such last repeal shall not revive the Ordinance, or part thereof, before repealed, unless there be words added reviving such Ordinance, or any part thereof.

Repealed provisions to remain in force until substituted provisions come into operation.

V. That whenever any Ordinance shall be made, repealing in whole or in part, any former Ordinance, and substituting some provision instead of the provision so repealed, such provision or provisions so repealed shall remain in force until the substituted provision or provisions shall come into operation by force of the last made Ordinance.

All Ordinances, Public Ordinances, unless the contrary be provided.

VI. That every Ordinance of the Governor and Legislative Council made after the passing of this Ordinance, shall be deemed and taken to be a Public Ordinance, and shall be judicially taken notice of as such, unless the contrary be expressly provided by such Ordinance; and a copy of every such Ordinance printed, or purporting to have been printed, by the authority of Government, shall be admitted in evidence in all cases whatsoever, and it shall not be necessary in any case to prove that such copy was printed by such authority.

How Ordinances and sections of Ordinances may be referred to.

VII. That whenever in any Ordinance, conveyance, legal or other instrument, document, or proceeding, it may be necessary to refer to any Ordinance of the Legislative Council of this Colony, or to any section or sections of any such Ordinance, it shall not be necessary to set out the title of such Ordinance, but it shall be sufficient to refer to the number of the Ordinance, and the year of our Lord, or the year of the Reign in which such Ordinance may have been passed, and in case of reference to any section or sec-

tions to refer to the same by the number or numbers of such section or sections, according to the copies of the Ordinance printed, or purporting to have been printed, by the authority of Government.

Appropriation of duties, fees, fines, penalties, forfeitures, &c., &c.

VIII. That whenever, by any Ordinance of the Legislative Council to be passed, any duties, fees, fines, penalties, forfeitures, sum or sums of money, may be made payable, and unless the same shall, by any such Ordinance, be otherwise expressly applied or appropriated, all such duties, fees, fines, penalties, forfeitures, or the proceeds thereof upon sale, sum or sums of money, or so much thereof respectively as shall not be so otherwise expressly applied and appropriated as aforesaid, shall be paid into the hands of the Colonial Treasurer, and be appropriated to the use of Her Majesty, her heirs and successors, for the public uses of the said colony, and the support of the Government thereof.

Sections A, B, C, D, E, F, G, H, I, may be incorporated with future Ordinances by reference only.

IX. That whenever in any Ordinance to be passed, it may be deemed advisable to introduce any of the provisions contained in the sections set forth in the schedule hereunto annexed, and lettered respectively A, B, C, D, E, F, G, H, I, it shall not be necessary to do so at full length; but it shall and may be lawful in such Ordinance to declare by reference to the letter or letters only that any one or more of the said sections of this Ordinance shall be incorporated with the said ordinance, and such sections so referred to, and every word, matter, and thing therein contained, shall thereupon be incorporated with, and taken to form part of the said Ordinance to all intents and purposes, and in as full and ample a manner as if the said section or sections had been introduced and fully set forth in such Ordinance.

Schedules to form part of Ordinance.

X. That the schedule hereunto annexed shall form and be part of this Ordinance.

Short title.

XI. That this Ordinance may be cited as "The Shortening Ordinance, 1853."

(Signed) CHARLES FITZGERALD,
Governor and Commander-in-Chief.

Passed the Council, 13th day of April, 1853.

(Signed) A. O'GRADY LEFROY,
Clerk of the Council.

SCHEDULE ABOVE REFERRED TO.

A.

A.

Jurisdiction, recovery, and appropriation of penalties.

That all informations and proceedings in respect of offences against this Ordinance hereby made summarily punishable upon conviction before a Justice or Justices of the Peace in Petty Sessions, shall be heard and determined, and the penalties and forfeitures in respect of the same be enforced and appropriated (if not hereinbefore otherwise appropriated) according to the provisions of

an Ordinance, No. 5, passed in the 14th year of the reign of Her Majesty Queen Victoria.

* * * * * *

C.

C. Limitation of proceedings, three months.

That all informations and proceedings in respect of offences against this Ordinance shall be commenced within three calendar months after the offences thereby respectively charged shall have been committed.

* * * * * *

G.

G. Protection of persons acting under Ordinance.

And for the protection of persons acting in execution of this Ordinance, be it enacted that notice in writing of any action about to be commenced for anything done under this Ordinance shall be given to the defendant one calendar month at least before the commencement of the action, and in every such action the defendant may plead the general issue, and give this Ordinance and the special matter in evidence at any trial to be had thereupon, and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought; or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant, together with costs incurred up to that time; and if a verdict shall pass for the defendant, or the plaintiff become non-suited, or discontinue such action after issue joined, or if upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial shall be, shall certify his approbation of the action and of the verdict obtained thereon.

H.

H. No action to lie against any Justice, &c., unless there be direct proof of corruption or malice.

That no action shall lie against any Justice of the Peace, Officer of Police, Policeman, Constable, Peace Officer, or any other person in the employ of the Government, authorized to carry the provisions of this Ordinance, or any of them, into effect; or any person acting for or under them, or any of them, on account of any act, matter, or thing, whatsoever done, or to be done, or commanded by him, them, or any of them, in carrying the provisions of this Ordinance into effect against any party or parties offending, or suspected to be offending against the same, unless there be direct proof of corruption or malice, and unless such action be commenced within three calendar months after the cause of action or complaint shall have arisen; and if any such person shall be sued for any act, matter, or thing, which he shall have so done, or shall so do in carrying the provisions of this Ordinance into effect, he may plead the

general issue, and give the special matter in evidence; and in case of judgment after verdict, or on demurrer being given for the defendant, or of the plaintiff discontinuing or becoming nonsuit in any such action, the defendant shall be entitled to, and have treble costs.

I.

Appeal, if sum adjudged by one Justice exceed £10, or by two Justices exceed £20, or if imprisonment exceed one month.

I.

That in all cases where, on any summary conviction under this Ordinance of any person not being a convict, the sum adjudged by one Justice to be paid shall exceed £10, or by two or more Justices, shall exceed £20, or the imprisonment, whether adjudged by one or more Justice or Justices, shall exceed one calendar month, any person who shall think himself aggrieved by such conviction may appeal to the next Court of General or Quarter Sessions, which shall be holden not less than 20 days after the day of such conviction, at Perth, in the said Colony, unless such conviction shall take place within 100 miles of Albany in the said Colony, in which case any appeal from such conviction shall be to the next Court of General or Quarter Sessions, holden not less than 10 days after the day of such conviction at Albany aforesaid.

WESTERN AUSTRALIA.

ANNO VICESIMO OCTAVO VICTORIÆ REGINÆ.

No. II.

An Ordinance to establish Courts of Inquiry into the causes of Wrecks and other casualties.

[11*th July*, 1864.]

Preamble.

WHEREAS it is expedient to establish Courts of Inquiry into the causes of Wreck and casualty happening on the Coasts of this Colony, with a view to investigate the same as soon as possible after they occur: Be it therefore enacted by His Excellency the Governor of Western Australia, and its dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

Inquiries to be instituted in case of Wreck and casualty.

1. When any British ship or vessel used in navigation, and not propelled by oars, is lost, abandoned, or materially damaged on or near the coasts of Western Australia, or when any such ship or vessel causes loss or material damage to any other ship or vessel on or near such coasts, or when, by reason of any casualty happening to or on board of any such ship or vessel on or near such coasts, loss of life ensues, or when any such loss, abandonment, damage, or casualty happens elsewhere, and any competent witnesses thereof arrive or are found at any place in the said Colony, it shall be lawful for the Principal Officer of Customs residing at or near the place where such loss, abandonment, damage, or casualty occurred, if the same occurred on or near the Coasts of Western

Australia, but if elsewhere, at or near the place where such witnesses as aforesaid arrived, or are found, or can be conveniently examined, assisted by a Justice of the Peace, to make inquiry respecting such loss, abandonment, damage, or casualty, and to draw up a formal case setting forth the specific charges of incompetency or misconduct alleged against any owner of a certificate of a master, mate, or engineer of any such ship or vessel, as having caused such loss, abandonment, damage, or other casualty, and such Principal Officer of Customs and Justice, if it shall appear to them requisite and expedient, shall formally investigate, hear, and determine such charges and case, and shall for that purpose, so far as relates to the summoning of parties, compelling the attendance of witnesses, administering oaths, taking evidence, and the regulation of proceedings, have and exercise similar powers as a Justice of the Peace has and exercises in proceedings relating to offences or causes of complaint upon summary conviction or order, or as near thereto as circumstances admit; and it shall be the duty of such Principal Officer of Customs and Justice, after stating their decision as to cancelling or suspending such certificate in open Court, to send a full report upon the case to the Governor, containing a full statement of their opinion thereon, accompanied by the evidence, and all the papers and proceedings used on such investigation, and such observations as they or either of them think fit; And such principal officer of Customs and Justice, shall, for the purposes of this Ordinance, have all the powers given by the first part of the Imperial Act, entitled the "Merchant Shipping Act, 1854," to inspectors appointed by the Board of Trade.

Witnesses to be allowed expenses.

2. Every witness summoned by such Principal Officer of Customs and Justice shall be allowed such expenses as would be allowed to any witness attending on subpœna to give evidence before the Supreme Court, and every person who refuses to attend as a witness before any such Principal Officer of Customs and Justice, after having been required to do so, and after having had a tender made to him of the expenses, if any, to which he is entitled as aforesaid, or who refuses or neglects to make answer, or to give any return, or to produce any document in his possession, or to make or subscribe any declaration, which any such principal Officer of Customs and Justice are hereby empowered to require, shall for each such offence incur a penalty not exceeding Ten Pounds, recoverable before any Justice of the Peace.

Penalty for refusing to give evidence, &c.

Penalty for obstructing Officers.

3. Every person who wilfully impedes any such Principal Officer of Customs and Justice in the execution of their duty, whether on board such ship or vessel or elsewhere, shall incur a penalty not exceeding Ten pounds, recoverable before any Justice of the Peace, and may be seized and detained by such Principal Officer of Customs, or by any other person or persons he may call to his assistance,

until such offender can be conveniently taken before some Justice of the Peace, or other Officer having proper jurisdiction.

Powers of Board of Trade to be exercised by principal officer of Customs and Justice, subject to Governor's confirmation.

4. The powers of cancelling and suspending the certificate of a master, mate, or engineer of any such ship or vessel, by the Two hundred and forty-second section, paragraph five, of the Act of the Imperial Parliament, entitled the "Merchant Shipping Act, 1854," as amended by "The Merchant Shipping Act Amendment Act, 1862," shall, subject to the confirmation of the Governor ([a]), as in the said Act of 1854 mentioned, be exercised by such Principal Officer of Customs and Justice.

Power to appoint Nautical Assessors.

5. In cases where nautical skill and knowledge are required, such Principal Officer of Customs and Justice shall have power to appoint one or more person or persons of nautical skill and knowledge to act as assessor or assessors to such Principal Officer of Customs and Justice, and such assessor or assessors shall, upon the conclusion of the case, either signify his or their concurrence in the decision, or if he or they dissent therefrom, shall signify such dissent and the reasons therefor in writing to such Principal Officer of Customs and Justice.

Certificate not to be cancelled unless owner has had a copy of report.

6. No Certificate shall be cancelled or suspended under this Ordinance, unless a copy of the formal case and charges upon which the investigation is had, has been furnished to the Owner of the Certificate, a reasonable time before the commencement of such investigation, nor, in cases where an assessor or assessors has or have been appointed, unless one assessor, at least, expresses his concurrence in the decision of the said Principal Officer of Customs and Justice.

Costs of such investigation.

7. The said Principal Officer of Customs and Justice may make such order with respect to the costs and expenses of such investigation, or any portion thereof, as they may deem just, and such costs shall be paid accordingly, and shall be recoverable in the same manner as other costs incurred in summary proceedings before a Justice of the Peace.

Master, mate, or engineer may be compelled to deliver certificate to be held.

8. Such Principal Officer of Customs and Justice may, if they think fit, require any master, mate, or engineer possessing a certificate of competency or service, whose conduct is called in question, or appears to them likely to be called in question, in the consideration of such investigation, to deliver such certificate to them, and they shall hold the same until the conclusion of the investigation ([b]), and shall then, either return the same to such master, mate, or engineer, or, if they are of opinion such certificate should be cancelled or suspended, forward the same together with the said report to the Governor, who shall then either return the same to such master, mate, or engineer, or, if he shall confirm the decision to cancel or

([a]) But see Merchant Shipping (Colonial) Inquiries Act, 1882, s. 7.

([b]) But see Shipping Casualties Investigations Act, 1879, s. 3.

suspend such certificate, forward it to the Board of Trade, to be ultimately dealt with as such Board thinks fit; and if any master, mate, or engineer fails so to deliver his certificate, when so required, he shall incur a penalty of not exceeding Fifty Pounds, to be recovered before any two or more Justices of the Peace.

Governor to notify his decision to accused, and forward proceedings to Board of Trade.

9. The Governor shall, on receipt of such report, or as soon after as possible, notify to the accused party the decision to which he may have come with respect to confirming (a) or otherwise the decision of such Principal Officer of Customs and Justice as to cancelling or suspending the Certificate of a master, mate, or engineer of such ship or vessel, and may, if he shall think fit, direct such Principal Officer of Customs and Justice to take further evidence, or to reconsider their decision and report; and shall, with all convenient despatch, transmit all the proceedings in such investigation, together with his decision, to the Board of Trade, and shall also, if he confirms the decision to cancel or suspend any such certificate, forward such certificate or any directions he may have given in reference thereto to the Board of Trade, with his report, so that the said Board may exercise the powers conferred by paragraph four, section Twenty-three, of the Twenty-fifth and Twenty-sixth of Victoria chapter Sixty-three.

Sections of Shortening Ordinance adopted.

10. That Sections A, C, G, H, and I of "The Shortening Ordinance, 1853," shall be incorporated with and taken to form part of this Ordinance to all intents and purposes, and in as full and ample a manner as if the said sections had been introduced and fully set forth herein.

Interpretation.

11. The term "Principal Officers of Customs" shall mean the Officer for the time being in charge of the Customs Department in any port or place.

Short Title

This Ordinance may be cited as "The Inquiries into Wrecks Ordinance, 1864."

L.S.

J. S. Hampton,

Governor and Commander-in-Chief.

Passed the Legislative Council, this 11th day of July, 1864.

G. E. Hampton,

Clerk of the Council.

(a) But see Merchant Shipping (Colonial) Inquiries Act, 1882, s. 7.

WESTERN AUSTRALIA.

ANNO QUADRAGESIMO VICTORIÆ REGINÆ.

No. IV.

An Act to extend the application of "The Inquiries into Wrecks Ordinance, 1864."

[*Assented to 28th August*, 1876.]

Preamble.

WHEREAS by "The Inquiries into Wrecks Ordinance, 1864," certain power was given to certain persons in the said Ordinance mentioned, to make certain inquiries, and to draw up and investigate certain charges of incompetency or misconduct drawn up as therein mentioned against certain persons owning certificates of master, mate, or engineer of any vessel, and it is expedient to extend the application of the said Ordinance so as to provide for the proper investigation of any charge that may from time to time be made of incompetency or misconduct on the part of any master, mate, or engineer of any British ship, in cases that do not fall within the scope of the said Ordinance: Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

Inquiries to be held into charges of incompetency or misconduct against masters, mates, or engineers.

1. It shall be lawful for the Principal Officer of Customs residing at or near any port or place in which any British vessel may arrive or be, assisted by a Justice of the Peace, to make enquiry into any charge of incompetency or misconduct whereby it is alleged that the master, mate, or engineer of such vessel is by reason of such incompetency or misconduct unfit to discharge his duties; and when any such charge has been made as aforesaid, the said officer and the said Justice shall proceed in all respects as if they were formally investigating, hearing, and determining charges contained in a formal case setting forth the same, as provided by the said recited Ordinance, and for that purpose shall have all the powers given by the said recited Ordinance for the purpose.

Officer of Customs and Justice to constitute a court within meaning of 25 & 26 Vict., c. 63, s. 23.

2. The said Principal Officer of Customs, together with the said Justice, are hereby declared to constitute a court for the purpose of investigating and trying the cases by this Act and the said recited Ordinance referred to them, within the meaning of the Imperial Act *twenty-five and twenty-six Victoria, chapter sixty-three, section twenty-three.*

Court to have power under circumstances to suspend or cancel certificates.

3. The said Court shall have power to suspend or cancel the certificate of any master, mate, or engineer, subject to the provisions of the said recited Ordinance and of this Act, whom, on such Investigation as is hereby and thereby provided, they may find to have been guilty of any gross act of misconduct, drunkenness or tyranny as aforesaid, or by whose wrongful act or default the loss or abandonment of or serious damage to any ship or loss of life has been caused.

4. In any inquiry to be held in pursuance of this or the said recited Act into any charge of incompetency or misconduct against the master, mate, or engineer of any vessel, the court hereinbefore mentioned shall, in all cases in which such master, mate, or engineer requires it, appoint one or more person or persons of nautical or engineering skill, as the case may require, to act as assessor or assessors to such Court; and such assessor or assessors shall upon the conclusion of the case either signify his or their concurrence in the decision, or if he or they dissent therefrom shall signify such dissent, and the reasons thereof, in writing to such court.

Court to appoint assessors in certain cases.

5. The said recited Ordinance and this Act shall be read and taken together as one Act.

Act incorporated with 28 Vict., No. 2.

6. This Act may be cited as "The Inquiries into Wrecks Ordinance, 1864, Extension Act, 1876."

Short title.

In the name and on behalf of the Queen I hereby assent to this Act.

WILLIAM C. F. ROBINSON,

Governor.

FORMS. (*)

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FORMS OF QUESTIONS

SUBMITTED TO

COURTS OF FORMAL INVESTIGATION.

See *Rule* 16, *Shipping Casualties Rules*, 1878, page 119.

THE MERCHANT SHIPPING ACTS, 1854 TO 1876.

IN THE MATTER of an Official Investigation ordered by the Board of Trade to be held into the circumstances attending the (*loss of, abandonment of, damage to, or Casualty to*) the British (*Steam or Sailing*), (*name of Vessel*) of (*Port of Registry*).

THE BOARD OF TRADE desire the opinion of the Court upon the following questions:—

(*Here state the Questions.*)

(*If a master, mate, or engineer appears to be in default, the following should be added*) :—

In the opinion of the Board of Trade the certificate of the (*master, mate, or engineer*) should be dealt with.

Dated this day of 18 .

(Signature of Counsel or
Solicitor representing the Board of Trade.)

The following questions have been submitted for the opinion of the Court at Formal Investigations:—

ABANDONED.

Q. Was the ———, when she left ———, in a good and seaworthy condition, and particularly,—

(*a.*) Was she overladen?

(*b.*) Was her cargo properly stowed and secured from shifting? (*a*)

(*c.*) Had she as laden sufficient stability?

(*d.*) Were the pumps properly protected?

Q. Whether she was of necessity or prematurely abandoned?

Q. Whether every possible effort was made to keep the water under and to save the vessel?

ANCHORAGE.

Q. Whether upon her arrival at ——— the ——— took up a safe and proper anchorage?

(*a*) *See* questions upon grain cargoes.

ASSISTANCE.

Q. Whether any, and if so, what assistance was rendered from the shore; and if not, what was the cause of no assistance having been rendered?

Q. Whether prompt and proper measures were taken by the coxswain of the ——— lifeboat to render assistance?

Q. Did the master of the "A." render such assistance to the "B." after the collision as was practicable and necessary under the provisions of the 36 & 37 Vict., c. 85, s. 16?

BAGS.—Grain *see* Grain.

BALLAST.

Q. Was the ballast on board the ——— proper ballast? Was it sufficient in quantity, and was it properly stowed and secured?

Q. Were proper and sufficient measures taken to protect the pumps from being choked with ballast?

Q. Did the ballast become mixed with water, and was it reduced to puddle?

Q. Was the ——— when she left in good and seaworthy condition?

BEAM ENDS.

Q. What was the cause of the ——— going over on her beam ends?

Q. Were proper measures taken to right the ship?

BLAME.—*See* Master, Owner, Pilot.

BOATS.

Q. Whether the ———'s boats were stowed in-board on chocks and gripped down, and whether in the opinion of the Court at least one boat should be carried outside ready for lowering while navigating frequented channels, and at all times when the weather would permit it.

Q. Were the boats carried by the vessel proper and sufficient boats, and were they in good and seaworthy condition, and ready for use?

Q. What was the cause of the boats being disabled?

BOILER.—*See* also Furnaces, Safety-valves, Managing Owner.

Q. What was the cause of the bursting of the bottom plate of the port combustion chamber?

Q. What was the cause of the explosion on board the steamship ——— on the ——— of ———, whereby ——— the ——— engineer lost his life (or) loss of life ensued?

Q. Whether there was undue pressure on the boilers, and great variation of pressure in the one as compared with the other.

Q. Whether blowing down the boilers is a proper means of preventing too great a density of water.

Q. Were the boilers on the ——— worked at too high a pressure?

Q. Whether the pressure gauges of the said boilers were reliable?

Q. Were the boilers of the ——— properly tested and examined in ——— 18—?

Q. Whether the boilers and their fittings were properly kept up and tested between ——— and ———?

BOX VENTILATORS.—*See* Rice.

BULKHEAD.

Q. Whether the foremost bulkhead of the ——— was properly constructed, of sufficient strength, and efficiently secured to the decks above and below it to withstand the pressure of heavy seas?

Q. Whether the loss of the vessel might have been averted if she had had a greater number of watertight bulkheads efficiently constructed and carried up to the *spar or other* deck?

CABLES.

Q. Whether the ——— was supplied with proper and sufficient cables?

CARGO.

Coal *see* Coal.
Deals *see* Deals and Deck Cargo.
Grain *see* Grain.
Iron *see* Iron.
Iron Rails *see* Iron.
Rice *see* Rice.
Steel *see* Iron.
Timber *see* Deals and Deck Cargo.

Q. Was the cargo properly stowed and secured against shifting?

Q. Were the pumps properly protected?

Q. Whether the cargo shipped on board the ——— was a safe and proper one?

Q. Whether the cargo was properly stowed, and whether the cases containing the friction tubes and amorces were properly packed and stowed?

CARRIAGE OF GRAIN ACT.—*See* Grain.

CASUALTY.

Q. What was the cause of the casualty which the ——— sustained, whereby loss of life ensued?

CERTIFICATES.

Q. In the opinion of the Board of Trade, the certificate of the *master, mate,* or *engineer* should be dealt with.

CHARTS.

Q. Was the ——— when she left ——— provided with proper and sufficient charts for the voyage?

Q. Whether the reef upon which the vessel stranded is properly marked on the Admiralty chart?

Q. Whether the managing owner of the said steamship was justified in allowing his vessel to proceed on her voyage to ——— without seeing that she was duly provided with proper charts and sailing directions for the voyage?

Q. Whether the master was justified in proceeding on his voyage without proper and sufficient charts and sailing directions?

CHIEF ENGINEER.

Q. Whether the chief engineer was justified in neglecting during the repairs to examine the safety valves to see that they were in working order?

Q. Whether it was, shortly before the casualty, reported to the chief engineer that the pressure indicated by the stoke-hole gauge was —lbs., and, if so, whether the chief engineer was justified in neglecting to personally inspect such stoke-hole gauge, or to ascertain whether the steam was really at the pressure indicated, and whether the safety valves were too heavily loaded, or not in working order?

Q. Whether the chief engineer was justified in neglecting to blow down the boilers and to keep down the density of the water in them from time to time, and whether proper means were taken to ascertain the density of the water in the boiler, and whether, having regard to the evidence, that on the day of the accident and on the day preceding the ball of the hydrometer showed out of the water, the engineer was justified in then neglecting to blow down the boiler, or to take other proper measures for reducing the density of the water?

Q. Were proper measures taken by the chief engineers to ascertain the thickness of the plates and the condition of the boilers from time to time from ——— to ———, 18—?

CHIEF OFFICER.

Q. Whether the chief officer was justified in altering the course without orders from the master?

Q. Whether the collision was caused by the wrongful acts and defaults of ——— the mate of the ———?

1. In neglecting to see that the mast-head light of his vessel was kept burning brightly as required by Article — of the said Regulations; and
2. In neglecting to comply with Articles ——— and ——— of the said Regulations?

Q. Whether the listing over and subsequent abandonment of the vessel was caused by the wrongful acts and defaults of the mate in neglecting to see that the temporary bulkhead was properly fixed and secured before taking in cargo?

CLEAR SIDE.—*See* Freeboard.

COAL.

Q. Whether the ———'s holds were properly ventilated, having regard to the class of coal carried, so that, independently of the hatchways, a system of surface ventilation was provided which would be effective in all circumstances of the weather?

Q. Whether, having regard to the nature of the cargo, and to the recommendation of the Royal Commission, the owners were justified in sending the ——— to sea, with no other means of ventilation for her hold than the booby hatch?

Q. Whether the ——— was properly ventilated for the safe carriage of coal cargoes, and if not, in what respect such ventilation was deficient?

Q. Whether the owner was justified in neglecting to provide a system of surface ventilation independently of the hatchways?

Q. Whether the ——— was supplied with thermometers, in accordance with Clause 5 of the report of the Royal Commissioners appointed to enquire into the spontaneous combustion of coal in ships, and paragraph 4 of the summary to the said report, and whether proper measures were taken in order that the temperature of the coal could be tested from time to time on the voyage?

Q. What was the quality of the coal shipped on board the ——— and was it or any part of it of such a character as to be dangerous for shipment on long voyages?

Q. Whether the coal shipped is liable to spontaneous combustion, and, if so, whether it is fit for conveyance on a long voyage such as was about to be undertaken by the ———?

Q. What was the master's object in partitioning the hold of the vessel, and if for the purpose of ventilation, was he justified in causing ventilation to be effected through the body of the cargo?

Q. Whether the ——— was properly laden, and whether the coal was properly stowed and trimmed?

COLLISION.

Q. What was the cause of the collision between the ——— and the ——— on the ——— day of ———?

Q. Whether both vessels complied with the Regulations for Preventing Collisions at Sea?

Q. Whether the ——— exhibited the lights required by the Regulations for Preventing Collisions at Sea, and if not, whether the neglect to do so contributed to the casualty?

See Regulations for Preventing Collisions at Sea. Thames Bye Laws. Tyne Bye Laws.

COMPASSES.—Appliances for Testing. *See* Fittings, condition of.

Q. Whether the steerage compass was in good and proper order?

Q. Were the ———'s compasses in proper condition and order when she left ——— and were proper measures taken to adjust them and to ascertain their deviation? If not, were the owners to blame for allowing the vessel to go to sea without having them properly adjusted and their deviation ascertained?

Q. Whether the placing of the ironwork of the rudder in proximity to the binnacle compass was justifiable, and whether it in any way altered or affected such compass?

Q. Whether any measures were taken to verify the accuracy of such compass, and to ascertain the deviation or variation thereof after the said ironwork had been placed near it; and whether the master was thereafter justified in trusting to such compass?

COURSES.

Q. Whether safe and proper courses were set and steered after passing ——— and whether due and proper allowance was made for leeway, tide, and current?

CONDITION OF VESSEL.

Q. Whether at the time she left ——— the ——— was in good and seaworthy condition?

Q. Whether, in the condition in which she then was, she was fit to carry on the voyage, with safety, the cargo stowed in her?

CONSTRUCTION. *See* Bulkheads. Freeboard. Overmasting. Water Ballast. Well Deck.

COVERS OF SAFETY VALVES.

Q. Whether the covers of the safety valve boxes were properly secured and in good order?

CRANK SHAFT.—Flaw in.

Q. Whether at the time the ——— left ——— she was in good order and condition, and well found in every respect, having regard particularly to the position of the crank shaft?

DAMAGE.—(Not stranding).

Q. What was the cause of the damage the ——— sustained? (*)

Q. Whether she was placed in a safe and proper loading berth at ——— and whether she there became damaged?

DECK.—Condition of.

Q. Whether her decks were properly caulked and watertight?

Q. Whether every possible effort was made to repair the decks, and to keep the water under?

DECK CARGO.

Q. Having regard to the safety of timber-laden ships, and the lives of their crews, the opinion of the Court is requested generally as to the danger or otherwise of vessels of this description leaving foreign ports at so late a season of the year with heavy deck loads?

Q. Whether the master was justified in taking such a heavy deck cargo on a winter voyage across the Atlantic?

Q. Whether the vessel was overladen?

Q. Whether as laden, the vessel had sufficient stability?

Q. Whether the cargo was properly stowed and secured?

Q. Whether she carried too heavy a deck cargo, having regard to the nature of the voyage and structural strength of the vessel?

DECK FITTINGS.

Q. Whether the engine-room skylight and other deck fittings were so constructed as to enable her to encounter a gale of wind and heavy sea with safety?

Q. Whether the skylight and all the other deck openings were sufficiently protected?

(*) The vessel was damaged and subsequently lost by striking on a reef.

DISC LOAD-LINE.

Q. Whether the disc or load-line was placed in a proper position on the ship's side?

DISTANCE RUN.

Q. Whether the distance the ——— had run was correctly estimated, and whether every possible effort was made from time to time to ascertain and verify her position, especially at the time when the master gave orders to alter the course?

DRUNKENNESS.

Q. Whether at the time of the stranding the master was in a state of intoxication?

DRUNKENNESS.—Officers.

Q. Whether the stranding of the vessel was caused by the incapacity of her officers arising from drunkenness?

DRUNKENNESS.—Master and mate.

Q. Whether when she left ——— on the morning of the ——— the ——— was in good condition and well found, and the master and crew were in a fit state to take charge of her?

Q. Whether, assuming the latter part of the previous question to be answered in the affirmative, the master and mate subsequently became so drunk as to render themselves totally incapable to navigate the vessel, and also whether they did not by supplying them with spirits induce the rest of the crew to get drunk?

Q. Whether the engineers, or either of them, came on board in a state of intoxication?

Q. Whether the chief officer acquainted the master with the state in which he saw the engineers; and, if so, whether the master was justified in proceeding to sea with his engineers in a state of intoxication, and his firemen incompetent?

Q. If the master was unaware of the state of intoxication in which his engineers are stated to have been, whether the chief officer was justified in neglecting to report it to the master?

Q. Whether the engineers were in such a state of intoxication as to have been incompetent to perform their duty?

ENGINEER.—*See* Chief Engineer.

EXPLOSION.—Boiler *see* Boiler.

EXPLOSION.—Coal Gas *see* Coal.

EXPLOSIVES.—*See* Cargo.

FIRE.

Q. What was the cause of the fire on board the ——— and again at ——— on the ———, which led to the loss of the ———.

Q. Whether every possible effort was thereafter made to extinguish such fire.

Q. Whether the stove on the cabin deck was properly protected.

FITTINGS OF VESSEL.

Q. Whether the ——— was properly constructed and fitted?

FITTINGS OF COMPASSES.

Q. Whether the ——— was supplied with proper appliances to ascertain the deviation of her compasses?

FOG.

Q. Whether considering the state of the weather between the points above indicated, and more particularly on approaching ———, it was not the master's duty to have brought his ship to an anchor; or to have lain to until the fog lifted?

FOG HORN.—*See* Regulations for Preventing Collisions at Sea, Art. 12.

FREEBOARD.

Q. Whether, having regard to the construction of the ——— she had sufficient freeboard?

Q. Whether she had sufficient freeboard for a voyage at the particular season of the year?

Q. Was she overladen and had she sufficient freeboard?

FURNACES.

Q. What was the cause of the falling in or coming down of the crowns of the furnaces?

GENERAL POINTS.

Q. Whether the ——— was prematurely abandoned?

Q. What was the cause of the ——— going suddenly over on her beam ends?

Q. Was her cargo properly stowed?

Q. Was the ——— when she left ——— in good and seaworthy condition?

Q. Whether the master and officers are, or either of them is, in default?

Q. What was the cause of the collision?

Q. Whether a safe and proper course was set and steered, and whether a due and proper allowance was made for tide and currents?

Q. Whether the course set was steered?

1. What was the cause of the fire which broke out on board the ——— at ——— on the ——— day of ———.

4. Whether every possible effort was made, immediately on the discovery of the fire, to extinguish it?

Q. What was the cause of the loss of the ———?

Q. Whether the lead was used, and, if not, whether its neglect was justifiable?

Q. What was the cause of the ——— making so much water, and whether every possible effort was made to ascertain the cause of the leak and stop it?

Q. Whether the master was on deck at a time when the safety of his vessel required his personal supervision?

Q. What, in the opinion of the Court, is the cause of the ——— not having been heard of since she proceeded from ——— to sea on the ——— day of ——— last?

Q. Was the ——— navigated with proper and seamanlike care?

GENERAL POINTS.—(*Continued.*)

Q. Whether, having regard to the register tonnage, construction, and age of the ——, and taking into consideration the season of the year, she was in a fit and proper condition to carry a cargo of ——— tons of ——— on the voyage intended?

Q. Had she, as [laden] or [constructed] sufficient stability?

Q. What was the cause of the stranding of the ——— off ——— on the ——— day of ———?

Q. Whether prompt and proper measures were taken to save the ——, and also the lives of the men who were lost in launching the boat?

Q. Whether after the accident happened, the master, officers, and crew of the ——— did all they could to save the vessel?

Q. Whether the ——— was navigated with proper and seamanlike care, and all proper means used to get her off when she stranded?

Q. Whether, when the fog-bank was seen, prompt and proper measures were taken to verify the position of the vessel?

Q. Whether the hold was properly and sufficiently ventilated, so as to ensure a system of surface ventilation which would be effective in all circumstances of the weather?

GRAIN CARGOES.

Q. Whether all necessary and reasonable precautions were taken by the master in order to prevent the cargo from shifting, as required by section 3 of the Carriage of Grain Act, 1880?

Q. Whether the feeders in the 'tween-decks were properly constructed?

Q. What was the cause of the listing over and subsequent abandonment of the ——— on the ———?

Q. Whether the pump wells were properly constructed and grain tight?

Q. Was the platform properly constructed, of sufficient strength and thickness, and grain tight?

Q. Whether the shifting boards were sufficient in depth and thickness? whether they were properly secured? and whether the beam fittings were sufficient?

Q. Whether the shifting boards were grain tight, and whether they extended from deck to deck, and from deck to keelson; if not, whether the shifting boards were sufficient, and whether they were properly and securely fastened and shored?

Q. Whether the stanchions were of sufficient strength, and whether the same were properly secured?

Q. Were the provisions of "The carriage of Grain Act, 1880," and of the official regulations issued by the Board of Trade under that Act, so far as they are applicable to the voyage in question, fully complied with?

Q. Whether all the regulations of Vining's Bureau of Inspection, as approved by the Board of Trade, and subject to the regulations contained in the 2nd schedule of the official notice, dated 31st December last, were complied with, and, if not, which of the said regulations and sections of the schedule were not complied with, and in what respect?

Q. Was the vessel overladen? Was the grain carried in bulk supplied with proper feeders or secured by bags of grain or other cargo as required by section 3 of the 2nd schedule above referred to?

Q. What clear side had the vessel when she left ——— ?

Q. Was the cargo loaded and stowed in accordance with section 5 of the Carriage of Grain Act, 1880, that is, was it loaded and stowed in accordance with the rules of the Board of Marine Underwriters, as approved by the Board of Trade, and subject to the provisions contained in the second schedule of the Official Notice, dated December 31st, 1880?

Q. Whether all the regulations required by the Carriage of Grain Act, 1880, as approved by the Board of Trade for the stowage of cargoes of grain in bags at San Francisco were complied with?

GRAIN, CARRIAGE OF, ACT.—Sec. 3.

Q. Whether the cargo was properly stowed, and whether all reasonable and proper precautions were taken to prevent it from shifting, in accordance with section 3 of the Carriage of Grain Act, 1880.

Sec. 4 (*a.*)

Q. Was the amount of cargo carried in bulk in the 'tween-decks excessive, and was it more than was required for the purpose of feeding the lower hold?

Sec. 4 (*b.*)

Q. Was the cargo carried in bulk in the 'tween-decks, carried in properly constructed feeders?

HOLD.—Ventilation of. *See* Coal.

INSTABILITY.—*See* Stability.

INTOXICATION.—*See* Drunkenness.

IRON.

Q. Whether the cargo was properly stowed, and whether proper means were taken for securing the cargo by shoring or otherwise?

LEAD.

Q. Whether the lead was used with sufficient care, frequency, and accuracy?

Q. Whether the total neglect of the lead was justifiable?

LEAKAGE.

Q. What was the cause of the ——— making so much water?

Q. Was every possible effort made to ascertain the cause of the leak and to stop it?

LIFEBOAT.

Q. What was the cause of the neglect of lifeboat of the ——— stationed at ——— to render assistance to the ———, on the ——— 18—, and to the ——— on the ——— 18— in response to signals of distress exhibited by such vessels, and repeated by the ——— lightship?

Q. Is the local committee of the branch of the ———, or the secretary of such committee, or the coxswain of either of such lifeboats, and if so, which of them, to blame for such neglect to render assistance to such vessels? Is any other person, and if so, who, to blame for the neglect to launch either of the said lifeboats in response to such signals of distress? Has either of such lifeboats been launched since the ——— 18—, and if not, what was the cause of such omission? Is any person, and if so, who, is to blame for it?

Q. Whether prompt and proper measures were taken by the coxswain of the ——— lifeboat to render assistance?

Q. Whether, in the opinion of the Court, the ——— lifeboat was properly manned, and whether she is manned by the best persons available at ——— for that purpose?

Q. Whether the ——— lifeboat was navigated in a proper and seamanlike manner?

LIFTING GEAR.—*See* Safety Valves.

LIGHTS.

Q. Whether the light seen was the ———, and, if so, whether the bearings and distance of the light were correctly estimated?

See Regulations for Preventing Collisions at Sea.

LLOYD'S.

Q. What were the defects reported to Lloyd's in ———, in consequence of which the character of the vessel was expunged from their register book, and whether the said vessel was subsequently, in the said month of ———, thoroughly and properly repaired?

LOADING.

Q. Whether the vessel was properly laden?

LOAD-LINE.—*See* also Freeboard and Stability.

Q. Whether the load-line was placed in a proper position consistently with the safety of the ——— when she left this country on her last voyage?

LOOK-OUT.

Q. Whether a good and proper look-out was kept, particularly for shoals and shallow water?

LOSS OF VESSEL.

Q. What was the cause of the loss of the ———?

See Missing Vessels.

MACHINERY.—*See* Boilers, Crankshaft, Furnaces, Managing Owner, Safety Valves.

MANAGING OWNER.

Q. Whether the managing owner of the ——— was justified in allowing his vessel to proceed on her voyage to ——— without seeing that she was duly provided with proper charts and sailing directions for the voyage?

Q. Was the load-line disc placed where it was by the order, or with the knowledge or sanction of the managing owners or their agents?

Q. Were the owners of the ——— justified in leaving the superintendence of the engines and the boilers solely to their chief engineers before, and especially after ———, 18—, or should they have continued to employ a superintendent engineer, or to have employed consulting engineers?

Q. Did the owners take fit and proper measures to ensure the safety of the ——— and her machinery?

Q. Whether the managing owner took proper measures to ensure the ——— being sent to sea as regards her machinery in a proper and seaworthy condition?

Q. Whether the managing owner was justified in neglecting to ascertain the amount of pressure on the safety valves?

Q. Was the ——— overladen with the knowledge or sanction of the managing owners or their agents?

Q. Was she undermanned with the knowledge or sanction of the managing owner?

Q. Whether the owner took proper measures to ventilate the holds, so as to ensure a system of surface ventilation, independently of the hatchways, which would be effective in all circumstances of weather.

MANNING.

Q. Whether she was properly and sufficiently manned?

MASTER.

Q. Whether the master was justified in proceeding on his voyage without proper charts and sailing directions?

Q. Whether the master (who is also managing owner) and any other person are or either of them is in default in not seeing that his cargo was properly stowed and trimmed so as to afford sufficient ventilation?

Q. Whether the master is to blame for not having seen that the fittings of the yards were in good order before he started?

Q. Whether, having regard to the age of the ———, to the fact that she was a soft wooden ship, to her registered tonnage, and the nature of her voyage she was about to undertake, the master was justified in taking so heavy a deadweight cargo?

Q. Whether the master was justified in placing additional weight above the mean centre of gravity of the ———, machinery and cargo, by filling the store-room and petty officers' quarters with seed, such space not being intended for the reception of cargo?

Q. Whether, in the event of the Court finding that the vessel was unseaworthy, any person other than the master is responsible or in default therefor?

Q. Whether the loss of the ——— was caused by the wrongful acts and defaults of the master—

In taking the said vessel to sea too heavily laden.

In neglecting to see that his pumps were in proper working order, and neglecting to have the ballast ports properly caulked before leaving, and in subsequently prematurely abandoning the said vessel?

In neglecting to secure the cargo on board the said steamship from shifting by boards, bulkheads, or otherwise?

In neglecting to take any measures to ascertain that the fire was thoroughly extinguished after it broke out, and in neglecting, after it again broke out, to ascertain its whereabouts, or thereafter to scuttle the ship, or obtain assistance from the shore, or failing this, to at once run his said vessel in for the land?

In neglecting to replenish the coal bunkers at ———?

In stopping the engines, thus leaving the ——— to labour in the trough of the sea, instead of making for the nearest port and

By flooding the first compartment of the fore hold with water out of the after compartment of the same hold

Q. Whether the master was justified in leaving the ——— at anchor without lights?

Q. Whether the master was on deck at a time when the safety of his vessel required his personal supervision?

Q. Whether when the master went below he left proper instructions with the chief officer as to the courses to be steered?

Q. Whether the master was justified in leaving the deck with an uncertificated officer in charge?

Q. Whether proper precautions were taken by the master to ascertain the deviation of his compasses?

Q. Whether the master made proper allowance for tide and leeway after the breaking adrift of the rudder; and whether he was justified in keeping his vessel so long on the ——— course without taking any steps to verify his assumed position?

Q. Whether the master was justified in trusting to his patent log alone, or whether he ought to have had his hand log put overboard from time to time in addition, or taken other measures to ascertain his position?

Q. Were any signals made for a pilot, and if not, whether the master was justified in neglecting to signal for a pilot?

Q. Was the stranding of the said vessel caused by the wrongful acts and defaults of the master?

1. In neglecting, after finding that his compass had taken

the vessel too much to the westward, to take any measures to ascertain the deviation of such compass?

2. In neglecting thereafter to make any allowance for such deviation?
3. In allowing the vessel to continue on a —— —— course set by the boatswain, and in neglecting, after the weather came in thick, to take a cast of the lead?
4. In steering an east course after land was sighted and after hearing the fog gun?
5. In neglecting to slacken the speed of his vessel after the weather became thick?
6. In neglecting to verify his position by a cast of the lead when the weather became thick, especially after hearing the gun?

Q. Whether, having regard to the condition of the vessel, the master was justified in refusing the assistance of a tug; and, further, whether he was justified in not getting his vessel into a harbour?

Q. Whether it was right on the part of the master to refuse the assistance offered his vessel by the two vessels, when he alleges that the reason he abandoned his vessel was the condition of the rudder, and when he further alleges that if he had had spare spars he would have rigged a spare rudder and proceeded in the vessel?

In the opinion of the Board of Trade, the certificate of the master should be dealt with.

MATE.—*See* Chief Officer, Second Officer.

MISSING VESSELS.

Q. What, in the opinion of the Court, is the cause of the ——— not having been heard of since she left ——— on the ———?

Q. What, in the opinion of the Court, from the evidence before them, was the cause of the loss of this vessel?

Q. What, in the opinion of the Court, from the evidence before them, is the cause of this vessel not having been heard of since she was spoken by the ——— on the ———?

NAVIGATION.

Q. Was the ——— navigated with proper and seamanlike care and skill?

OBSERVATIONS.

Q. Whether proper observations were taken from time to time, when opportunity permitted, to ascertain the position of the ———?

OFFICERS.—*See* Chief Officer. Second Officer.

OVERLOADING.—*See* Stability.

Q. Whether the vessel was overladen?

Q. Whether, taking into consideration the age and character of the vessel, the season of the year, and the nature of the

intended voyage, she was fit to carry a cargo of —— tons on a registered tonnage of —— tons?

Q. Whether, having regard more especially to the time of the year and the nature of the cargo, she was overladen, and whether her cargo was properly stowed?

Q. Whether, having regard to the age of the ——— and her underdeck tonnage, —— tons of railway iron was too heavy a deadweight cargo for her on a winter voyage?

OVER-MASTING.

Q. Whether the ——— was over-masted?

OWNER.—*See* Managing Owner.

PETROLEUM.

Q. Whether the petroleum was stowed so as to protect it from chance of ignition by the cabin stove?

PILOT.

Q. Whether the stranding of the ——— was due to the pilot having shaped a course without making due allowance for the set of the flood tide; and brought the ship to an anchor?

Q. Whether any blame attaches to the pilot for the said stranding of the said vessel?

Q. Whether any efforts were made to secure a pilot, and if not, whether the neglect was justifiable?

Q. Were any signals made for a pilot, and if not, whether the master was justified in neglecting to signal for a pilot?

POSITION OF VESSEL.[1]

Q. Whether every proper effort was made from time to time to ascertain and verify the position of the ——?

PREMATURELY ABANDONED. *See* Abandoned.

PRESSURE GAUGE. *See* Boiler.

PUMPS.

Q. Whether the pumps were in proper condition on leaving ——— and whether when the starboard pump became subsequently disabled, proper measures were taken to repair it or get the port pump into working order?

Q. Were the pumps properly protected and in good order, and whether the casing was sufficiently large to admit of a man descending to examine them, and when the cargo was put on board they were additionally protected with planks and matting?

Q. Whether the pumps were sufficient and properly fitted for all requirements?

REGULATIONS for Preventing Collisions at Sea.

Art. 2. Q. On the night of the collision were the lights required by Article 2 of the Regulations for Preventing Collisions at Sea exhibited by the ——— at the proper time mentioned in such regulations?

3. Q. Did the ——— before, and at the time of the collision exhibit proper and sufficient lights, in accordance with Article 3 of the above Regulations?
4. No question has yet arisen.
5. No question has yet arisen.
6. Q. Did the ——— before and at the time of the collision exhibit proper and sufficient side lights in compliance with Articles 3 and 6 of the Regulations for Preventing Collisions at Sea?
7. No question has yet arisen.
8. No question has yet arisen.
9. No question has yet arisen.
10. Q. Whether the ——— carried the lantern required by Article 9 of the Regulations for Preventing Collisions at Sea, dated 1863, and whether such lantern was exhibited as required by the said article.
11. No question has yet arisen.
12. Q. Was the ——— provided with an efficient fog horn, in compliance with the provisions of Article 12 of the Regulations for Preventing Collisions at Sea, and did she comply with sub-section (*b*) of that Article?
13. If the weather was thick, did both, or either of the vessels proceed at a moderate speed and otherwise conform to the 13th Article of the Regulations for Preventing Collisions at Sea?
14. Q. Whether the ——— complied with Article 14 par. (—), of the said rules and regulations.
15. No question has yet arisen.
16. Q. Were the ——— and the ——— crossing ships within the meaning of Article 16 of the Regulations for Preventing Collisions, and, if so, were proper measures taken on board the ——— to keep out of the way of the ———?
17. Did the ———, on the night of the collision, comply with Article 17 of the Regulations?
18. Did the ——— duly conform with Article 18 of the said Regulations?
19. Did the ——— use the signals authorised by Article 19 of the above Regulations?
20. Q. Was the ——— an overtaking ship within the meaning of Article 20 of the said Regulations, and, if so, were proper measures taken on board the ——— to keep out of the way of the ———?
21. No question has yet arisen.
22. Did the ——— on the night of the collision, comply with Article 22 of the Regulations?
23. Q. Were both vessels navigated with proper and seaman-

like care, and with due regard had to the Regulations for Preventing Collisions?

Q. Which of the two vessels is, or are both, or is neither of them to blame for the collision?

24. Q. Was a proper look-out kept on board both vessels?

23 & 24. Q. Ought the ——— to have starboarded her helm when the collision was imminent in accordance with Articles 23 and 24 of the above Regulations?

RIGGING.—*See* also Gear.

Q. Was her rigging in good and proper order and properly set up at the time of sailing?

RICE.

Q. Whether the cargo was properly stowed, and whether the system of forming ventilators as adopted in the case of the ——— is a safe and proper one?

Q. Whether the bags should not be stowed a-burton, or at least every other tier a-burton, rather than in longers?

Q. Whether the bags as filled at ——— are capable of efficient stowage, or whether they should not rather be slack?

Q. Whether the box ventilators are of sufficient strength to withstand the pressure put upon them in the event of the vessel encountering heavy weather, and whether, in that event, they are not liable to collapse, and so set in motion the entire cargo?

RUDDER HEAD.

Q. What was the cause of the rudder-head being sprung, and whether prompt and proper measures were taken to secure the rudder, and whether the vessel was properly navigated until such rudder was secured?

Q. To what was the springing of the rudder-trunk and the subsequent starting of the stern-post attributable, and were all proper measures thereafter taken to secure such rudder?

See also Steering Gear.

SAFETY VALVES.

Q. Whether the safety valves to the boilers of the ——— were properly constructed and in good working order?

Q. Whether the lifting gear of the safety valves was efficient, and whether the covers of such safety valve boxes were properly secured and in good order?

SCURVY.

Q. What was the cause of the scurvy which broke out amongst the crew; and whether every possible effort was made to prevent it?

SEAWORTHINESS.

Q. Was the ——— in good and seaworthy condition when she left ——— ?

SECOND OFFICER.

Q. Was the second officer misled by the mistake in the charts?

Q. Were the proper courses set and steered after ——— .m. on the ——— ?

Q. Was the second officer justified in neglecting to call the master when ——— Lights were first made?

Q. Was the second officer justified in taking upon himself to alter the course without the master's instructions?

Q. Was the the second officer justified in keeping the course as altered until ———, without calling the master, particularly when he found himself nearing the shore?

Q. Whether the second officer took due care to ascertain and verify the position of the ———, and to identify the lights seen?

Q. Were prompt and proper measures taken by the second officer to save the vessel after the breakers were first heard?

Q. Whether the total neglect of the lead was justifiable?

Q. Was the stranding and subsequent loss of the vessel caused by any wrongful act or default on the part of the second mate, and particularly—

1. By neglecting to call the master when ——— Lights were first seen?
2. By altering his course without calling the master?
3. By neglecting to call the master when he found himself nearing the shore?
4. By neglecting to use the lead?

Q. Was the second officer of the ——— to blame in respect of the collision? and especially,—

1. In neglecting to slacken speed when the vessel was running through a snow storm?
2. In failing to see the lights of the ——— so soon as he ought to have done?

SHIFTING BOARDS.—*See* Grain.

SHIPBUILDER.

Q. Whether the Shipbuilder made a thorough and proper inspection of the machinery and boilers in order to ascertain all the repairs necessary to be done, and whether he was justified in neither examining the safety valves nor regulating their pressure?

SHIPOWNER.—*See* Managing Owner.

SMOKE.

Whether, when the ——— entered the smoke, speed was reduced, and extra precautions taken to keep a good look-out, and whether she was navigated carefully through it?

Whether such a volume of smoke was emitted from the cement works in the neighbourhood of ——— as to prevent the ——— seeing the ——— until she was in too close proximity to her to avoid a collision? and whether, in the opinion of the Court,

proper measures have been taken at the said cement works to prevent the possibility of the smoke obstructing the navigation of the River ——— ?

SPARE SPARS.

Q. Was the ——— properly equipped with spare spars?

SPEED.

Q. Did the ——— reduce her speed after the weather became thick; and, if not, was the master justified in proceeding at full speed after that time?

See Regulations for Preventing Collisions.

STABILITY.

Q. Whether the loss of the ——— was due to her unstable character?

Q. Whether, looking to the construction of the ——— and the depth to which she was loaded, she had sufficient stability, especially for a winter voyage?

Q. Whether, as laden, having regard to her construction, and especially to the size, height, and construction of her water ballast tanks, she had sufficient stability?

Q. Whether the ——— had sufficient stability?

Q. Whether she was overladen, and whether as laden she had sufficient stability?

Q. Was the cargo properly stowed, and, as laden, had she sufficient stability, especially for a winter voyage?

Q. Whether proper means had been taken to ascertain the stability of the ——— and the proper position to place the load-line, having regard to the safety of the ship when loaded down to that load-line?

Q. Whether, looking to the form and dimensions of the ——— and the depth to which she was loaded, and the nature of the cargo which she had on board, she had sufficient stability for a winter, or any voyage?

STANCHIONS.

Q. What was the cause of the ——— making so much water? Was it through the carrying away of the rough tree stanchions, or from other, and if so, from what cause?

See also Grain.

STEERING-GEAR.—*See* also Rudder.

Q. Whether the steering-gear fitted to the ——— is of such a nature as to be at all times efficient, and whether the vessel is fitted with a spare steering-gear which could be instantaneously applied in the event of the steam steering-gear not acting, and whether the steam steering-gear was the cause of the boiler priming?

Q. Were men stationed by the spare steering-gear while the ship was in narrow waters, and if not, is such a precaution reasonable or necessary?

Q. What was the cause of the steering-gear not answering the port-helm; and were prompt and proper measures then taken to apply any other steering-gear with which she was fitted, and were means at once taken to discover the defect and remedy it?

STOWAGE.—*See* Coal, Grain, Petroleum, Rice, Timber.

STRANDING.

Q. What was the cause of the stranding of the ——— ?

Q. Whether the master was justified in leaving the ——— before every possible effort had been made to save her?

Q. Whether after the vessel stranded the master took all the means within his power to get her off?

Q. Whether after land and breakers ahead had been reported, prompt and proper measures were taken to avoid them?

Q. Whether the ——— was navigated with proper and seamanlike care?

See Damage.

Q. Whether the master took proper measures to ascertain and verify his position previous to the ——— going ashore?

STRIKING not stranding.—*See* Damage.

THAMES.

Q. Whether both vessels complied with the bye-laws and regulations for the navigation of the River Thames?

TIMBER.

Q. Whether the cargo was properly stowed and secured?

VENTILATION.—*See* Coal, Rice.

VENTILATORS.

Q. Whether, if proper and sufficient surface ventilation was provided by cowls and otherwise, proper provision was also made for securing the cowls and ventilators in the event of the ——— taking a heavy sea on board; and whether adequate provision was made for keeping the water out of the said ship in the event of the cowls or tubes of the ventilators being carried away?

VESSEL AT ANCHOR.

Q. Whether, on the morning of the ———, the weather was blowing a gale on the land, and, if so, whether proper measures were taken to ensure the safety of the ——— ?

Q. Whether the gale was such that the port chain parted, or whether it was slipped?

Q. Whether, when the starboard cable was slipped, proper and sufficient sail was set, with a view to endeavour to save the vessel?

Q. Whether the master tried to wear the vessel, or whether he steered her direct for the beach.

WELL-DECK VESSELS.

Q. Whether, having regard to the construction of the ——— she was, and whether, in the opinion of the Court, vessels of similar (*i.e.*, long poop and well-deck) type, are adapted for the Atlantic trade during the winter season?

WRONGFUL ACT OR DEFAULT.—*See* Master.

THE MERCHANT SHIPPING ACTS, 1854 TO 1880.

SUMMONS TO ATTEND A SPECIAL INQUIRY (*)

Issued by the Board of Trade, October, 1882.

under "The Merchant Shipping Act, 1854,"

(17 & 18 Vict., c. 104.)

To

of

TAKE NOTICE, that I hereby, by virtue of the provisions of the Merchant Shipping Act, 1854, require you to attend personally before me at on day, the instant, at of the clock in the noon, for the purpose of being examined on oath upon the following matters, that is to say—

. .
. .
. .

AND take notice that I also require you then and there to produce all Books, Papers, or Documents, which may be in your possession or custody, or under your control, containing any Information relative to the matters aforesaid.

Given under my hand at this day of 18 .

Inspector.

NOTE.—Any person neglecting or refusing to attend as required by this Summons will incur a penalty not exceeding Ten Pounds. All proper and reasonable expenses in respect of a Witness's attendance will be paid.

(*) *See* Preliminary Inquiries, Chap. I., page 34.

Issued by the Board of Trade, May, 1879.

SUMMONS TO ATTEND A PRELIMINARY INQUIRY (a)

By an Officer of Customs, or Coast Guard, or by a person appointed for the purpose under Sec. 432 of "The Merchant Shipping Act, 1854."

To

Christian and Surname and Occupation of Person referred to in the Summons.		Name and Port of Registry of Ship in respect of which inquiry is to be instituted.	
Name.	Occupation or rating on board ship.	Name.	Port of Registry.

17 & 18 Vict., c. 104, ss. 15 & 432.
39 & 40 Vict., c. 80, s. 82.

TAKE NOTICE, that I hereby, by virtue of the provisions of The Merchant Shipping Acts, 1854 to 1876, require you to attend personally before me at

. .

. .

on day the instant, at of the clock in the noon, for the purpose of being examined on Oath relative to the

. .

of the said Ship: [And I also require you then and there to bring with you and produce the Official Log Book of the Ship, and all other Documents containing any Information on the subject of the Casualty.]

The words within the brackets only apply in the case of a Master or other person having the charge of the Log Book, and are to be erased in all other cases.

Given under my hand at this day of 187 .

Inspecting Officer of Coast Guard,
Principal Officer of Customs, or Person appointed by the Board of Trade under Sec. 432 of the Merchant Shipping Act, 1854.

*** NOTE.—Any person neglecting or refusing to attend as required by this Summons will incur a PENALTY not exceeding TEN POUNDS. Vide Section 15 of "The Merchant Shipping Act, 1854."—All proper and reasonable expenses in respect of a Witness's attendance will be paid.

NOTE.—*This Form is to be used by Inspecting Officers of Coast Guard, Principal Officers of Customs, and Persons appointed by the Board of Trade when Witnesses refuse to attend at a preliminary Inquiry under Section* 432 *of "The Merchant Shipping Act,* 1854."

(a) *See* Preliminary Inquiries, Chap. I., page 31.

SUMMONS TO APPEAR BEFORE A RECEIVER (a) TO MAKE A DEPOSITION.

Issued by the Board of Trade, January, 1865.

To

Christian and Surname and Occupation of Person referred to in the Summons.		Name and Port of Registry of Ship in respect of which examination is to be instituted.	
Name.	Occupation or rating on board ship.	Name.	Port of Registry.

TAKE NOTICE, that I hereby, by virtue of the provisions of the Merchant Shipping Act, 1854, require you to attend personally before me at

17 & 18 Vict., c. 104, ss. 15 & 448.

on day the instant, at of the clock in the noon, for the purpose of being examined on Oath relative to the

. .

of the said Ship: [And I also require you then and there to bring with you and produce the Official Log Book of the Ship, and all other Documents containing any Information on the subject of the Casualty.]

The words within the brackets only apply in the case of a Master or other person having the charge of the Log Book, and are to be erased in all other cases.

Given under my hand at

this day of 18 .

Receiver of Wreck, or Justice of the Peace.

*** NOTE.—Any person neglecting or refusing to attend as required by this Summons will incur a PENALTY not exceeding TEN POUNDS. Vide Section 15 of "The Merchant Shipping Act, 1854."—All proper and reasonable expenses in respect of a Witness's attendance will be paid.

NOTE.—*This Form is to be used by Receivers when it is expected that persons will refuse to attend for the purposes of the Examination under Section 448 of "The Merchant Shipping Act, 1854."*

ORDER FOR FORMAL INVESTIGATION (b).

Board of Trade, Marine Department.

"THE MERCHANT SHIPPING ACTS, 1854 TO 1876."

Formal Investigation into Shipping Casualty.

(*Name of Vessel.*)

In pursuance of the power vested in them by the Merchant Shipping Acts, 1854 to 1876, the Board of Trade, having received the

(a) *See* Preliminary Inquiries, Chap. I., page 36.

(b) *See* Formal Investigations, Chap. II., page 44.

annexed (*Report or Statement of the Case*), do thereupon order and direct that a Formal Investigation be held into the circumstances attending the

Dated this day of 18 .

An Assistant-Secretary to the Board of Trade.

The Solicitor,

Will be good enough to institute an Inquiry into this case accordingly.

REPORT. (*Annexed to Order.*)

In the Matter of the British Ship of the Port of . Official Number .

SIR,—I have to report that the above-named Ship left for on the day of 18 , with a crew of hands all told, passengers, and about tons of cargo, her draught of water at the time of leaving port being feet inches forward, and feet inches aft.

On the day or at m., the weather being the wind blowing from with the sea and the course being the vessel was under making about knots.

(*Here set out the circumstances attending the casualty.*)

Dated this day of 18 .

(Signed)

Receiver of Wrecks
Officer of Customs or Coast Guard
at

The Assistant-Secretary,
Marine Department, Board of Trade.

STATEMENT OF CASE. (*Annexed to Order.*)

In the Matter of the British ship of the Port of . Official Number .

The following is a statement of the case on which an Inquiry is ordered.

The above-named ship left for on the day of 18 , with a crew of hands, all told, passengers, and about tons of cargo, her draught of water at the time of leaving port being feet inches forward, and feet inches aft.

On the day of at m., the weather being the wind blowing from

ORDER FOR FORMAL INVESTIGATION.—*Continued.*

with the sea and the course being the vessel was under making about knots.

(*Here set out the circumstances attending the casualty.*)

Initials of Professional Officer.

Assistant-Secretary, Marine Department, Board of Trade,

day of 18 .

WHEREAS in pursuance of the power vested in them by the Merchant Shipping Acts, 1854 to 1876, the Board of Trade have directed that a Formal Investigation be held into the circumstances attending the (*describe the casualty*)

NOW THEREFORE they the said Board do hereby request the (*Wreck Commissioner, Stipendiary Magistrate, or Justices of the Peace*) to hold the same Investigation accordingly.

Dated this day of 18

An Assistant-Secretary to the Board of Trade.

SUMMONS UNDER SECTION 241 OF "THE MERCHANT SHIPPING ACT, 1854," AND "THE MERCHANT SHIPPING ACT AMENDMENT ACT, 1862." (a)

To

of

Summons to Witness.

WHEREAS under and by virtue of the above Acts, the Local Marine Board of the Port of is by the direction of the Board of Trade about to institute an investigation into the (b) and it hath been made to appear to the said Local Marine Board, that you are likely to give material evidence in this matter.

These are therefore to require you to be and appear before the said Local Marine Board, on the day of 18 , at the hour of in the noon, at and give evidence in the matter of the said investigation. And herein fail not under the PENALTY of TEN POUNDS which is imposed by Section 15 of the Merchant Shipping Act, 1854.

GIVEN under my hand, at . this day of in the year of our Lord, One thousand eight hundred and eighty .

For and on behalf of the said Local Marine Board,

Chairman, or Secretary.

(a) *See* Courts of Inquiry, Chapter VII., page 144.

(b) Here state subject-matter of investigation.

SUMMONS UNDER SECTION 241 OF "THE MERCHANT SHIPPING ACT, 1854," AND "MERCHANT SHIPPING ACT AMENDMENT ACT, 1862." (a)

Summons to Accused.

To (b) (c)
of the British ship of .
WHEREAS the (d) has reason to believe that you the said (e) are from (f) unfit to discharge your duties: And whereas the Local Marine Board of the Port of is, by direction of the Board of Trade, about to institute an investigation, under the provisions of Section 241 of "The Merchant Shipping Act, 1854," and "Merchant Shipping Act Amendment Act, 1862," into such (g) , the particulars whereof are set forth in the (h) hereunto annexed, upon which the said investigation is ordered:

These are therefore to require you personally to be and appear on the day of at o'clock in the forenoon at before the said Local Marine Board, to answer the said charge, bringing with you your certificate as such (i).

Given under my hand this day of in the year of our Lord at aforesaid.

For and on behalf of the said Local Marine Board,

Chairman.

Issued by the Board of Trade.

FORMS OF PROCEEDINGS FOR THE USE OF NAVAL COURTS (k).

FORM A.

REPORT OF PROCEEDINGS OF A NAVAL COURT (l).

Report of the proceedings of a Naval Court convened by (m)

(a) *See* Courts of Inquiry, Chapter VII., page 144.

(b) Christian and Surnames in full.

(c) Master, Mate, or Engineer, as the case may be.

(d) Board of Trade, or Local Marine Board of the Port of , as the case may be.

(e) Christian and Surnames as before.

(f) Incompetency or misconduct, as the case may be.

(g) Incompetency or misconduct, as the case may be.

(h) Copy of the Report, or Statement of the Case, as the case may be.

(i) Master, Mate, or Engineer, as the case may be.

(k) *See* Naval Courts, Chap. IX., page 174, and List of Forms, p. 556.

(l) The Report is to be signed by the President of the Court and sent to the Board of Trade with various annexes attached thereto and duly sealed.

(m) Insert name and title in full of naval officer or in his absence the Consular officer summoning the Court.

and held at (a) on the day of 188 , (b) to inquire into (c)

At the hour of in the noon on the said day of 188 , the Court composed as follows duly assembled, viz. :—

(d)

President.

} *Members.*

The summons convening the Court was read by (e) who had been nominated as Clerk of the Court. Annex No. .

NOTE.—*To facilitate the drawing of the report the following suggestive paragraphs are added to be adapted to the circumstances of each case.*

A letter from the master of the to H.M. Consul, requesting that a Naval Court might be held to investigate was read by the Clerk of the Court. Annex (f) No. .

[The entry in the Official Log-book], [or]

[The complaint which gave rise to the summoning of the Court] was read by the Clerk of the Court, and is annexed hereto in [certified copy], [original]. Annex No. .

[A certified copy of the] [The original] summons served on the parties is annexed. Annex No. .

A certified copy of the protest made by the master of the at the British Consulate at and sworn to by of his crew, was handed to the Court by and read by the Clerk, and is annexed hereto. Annex No. .

The Official Log-book of the was handed in to the Court

(a) Here describe precisely the place of meeting as given in the summons.

(b) If lasting more than one day insert here "and on the day (or days) of ."

(c) Here state purpose for which Court was summoned, following the wording of the summons.

(d) Insert names and description of President and members of the Court as given in the summons.

(e) Insert name of person who acts as Clerk of the Court.

(f) Original documents and depositions should whenever practicable be sent to the Board of Trade; when not practicable the copies must be duly certified and the reasons why the originals are not sent should be explained to the Board of Trade in transmitting the Report.

by , and portions thereof, of which a certified copy is
Annex No. . annexed, were read by the Clerk.

The handed to the Court the chart [describe it, giving also name of publisher and date] which had been used for the navigationn of the vessel; this was returned at the conclusion of the proceedings.

The entry in the Official Log being the statement of the circumstances which gave rise to the summoning of the Court was read by
Annex No. . the Clerk of the Court, and a certified copy is annexed.

The Court having been summoned to hear the [complaint] [charge] set forth in the said summons convening the Court [being a complaint touching the conduct of the master and [or] members of the crew of the] proceeded to hear and investigate such [complaint] [charge].

The [accused] [said] [as also the prosecutor] [complainant and others being present in Court the [accused] [said] was asked by the president whether he pleaded guilty or not guilty to the charge of, &c., to which he replied that he [pleaded guilty, and the Court thereupon stated that they would nevertheless hear the evidence and investigate the case.]

[Pleaded guilty, and the Court thereupon stated that they would hear sufficient witnesses to form a just opinion of the case, and receive any statement the [accused] [said] might wish to make.]

[Refused to plead; and the Court ordered the trial to proceed.]

[Pleaded not guilty; the Court therefore ordered the trial to proceed.]

The Court then [considering it desirable] [on the application of] ordered the witnesses [other than the parties to the proceedings (a)] to withdraw.

Annex No. . was called, sworn, and examined.

was called, and being unacquainted with English, was
Annex No. . sworn and examined through
who had been previously sworn as interpreter.

Annex No. . was called and examined but not on oath, since (b)

At p.m. the sitting of the Court was suspended for [half an] hour, and on the Court resuming at p.m.,
Annex No. . was called, sworn, and examined.

At p.m. the Court adjourned until the day of at o'clock in the noon.

[NOTE.—*The following paragraph A to be adopted upon the trial of any offence.*

A. The evidence having been concluded, the President then asked the accused whether having heard the evidence he wished to

(a) These words to be used in the investigation of shipping casualties, see notes to Rules 13, pp. 117 and 118.

(b) See note (b) to Form H.

say anything in answer to the charge, and reminding him that he need not say anything unless he wished, and that whatever he did say would be taken down in writing and might be used against him, whereupon he made a statement (a) in the terms hereto annexed. Annex No. .

The evidence is hereto annexed. Annex No. .

NOTE.—*In cases of shipping casualty the following paragraphs B and C must be adopted.*

B. A copy of the Report [or a statement of the case] upon which the investigation was ordered was furnished [ ] before the commencement of the investigation in pursuance of the Statute 25 & 26 Vict., c. 63, s. 23. A certified copy is annexed, endorsed with a memorandum of service signed by the person who served the original. Annex No. .

C. A charge having been made against he was present in Court during the whole of the proceedings, and full opportunity of making a defence was given to him. That defence was .

The Court was then cleared to consider its finding and order.

At the Court was re-opened, when, in the presence of the [the accused] [said] [witnesses and others] [the master and crew of the and others] the finding and order of the Court, which is to be deemed a part of the Report (b), was read by the President (c), and a copy is annexed. Annex No.

The Court recommends that a certificate as be issued to the said (d).

(a) In cases confined to an Inquiry into a wreck, abandonment, or loss of a ship, the certificated officers are by analogy to the procedure of Formal Investigations competent witnesses (*see* Rule XIV. and notes thereon pp. 118 and 119.) In other cases affecting certificated officers in which a charge is made of incompetency or misconduct (*see* page 169 note (*c.*)), they may be examined as witnesses at their own request, but in purely criminal cases in which a charge is made, such as those heard under the powers of 18 & 19 Vict., c. 91, s. 18 (*see* pp. 161, 162 and 168), the accused may not be questioned as a witness, and an oath should not be administered to him. He may, however, after being duly cautioned as above noted, make a statement in his defence, which should afterwards be read over to him, but he cannot be compelled to sign the statement unless he chooses to do so.

(b) It is necessary that the finding and order shall be made a part of the Report, in order to comply with the requirements of sub-secs. 1 and 3 of sec. 265 of "The Merchant Shipping Act, 1854." *See ante*, pp. 160, 161, and 177.

(c) *See* 25 & 26 Vict., c. 63, s. 23, sub-sec. (3), *ante*, p. 162. *See* also pp. 170 and 176.

(d) The Board of Trade may grant to any person whose certificate has been cancelled or suspended, a certificate of a lower grade. *See* 25 & 26 Vict., c. 63, s. 23, sub-sec. 4, p. 163. *See* also p. 178. It is competent to the Court and a common practice to make a recommendation accordingly.

Annex No. . [A copy of the conviction is annexed.]

Annex No. . An account of the expenses of the Court is annexed.

Annex No. . A certified copy of the wages account of , being a seaman or apprentice discharged by order of the Court is annexed.

[Signature and official title of President, and, if a Consular officer, his official seal.]

President of Naval Court.

FORM B 1.

SUMMONS OF NAVAL OFFICER CONVENING A NAVAL COURT.

Annex No. .

By ([a]) Esquire ([b]), Royal Navy, commanding Her Britannic Majesty's ship " ," now on the ([c]) .

In pursuance of the powers contained in sec. 260 of 17 & 18 Vict., c. 104, cited as the Merchant Shipping Act, 1854, I hereby summon a Naval Court to assemble at ([d]) on the day of 188 , at o'clock in the noon, to

[*Here insert purpose for which Court is summoned, selecting such one or more of the paragraphs next following as may apply to the particular case.*]

To be used when the Investigation takes place under sub-sec. 8 of sec. 260 the Merchant Shipping Act, 1854.

A [investigate the circumstances attending the [wreck] [loss] [abandonment] of the British [sailing ship] [steamship] of the port of official number [when on a voyage from to] [when anchored at] and the cause of such [wreck] [loss] [abandonment] and to inquire into the conduct of the master, certificated [first] mate, [second] mate and crew of the said vessel.]

To be used in cases of collision.

B [——— investigate the circumstances attending a collision between the British [sailing ship] [steam ship] of official number and the [describe the other vessel] on or about the day of 188 , whereby the [wreck] [loss] [abandonment] of the said ensued [whereby serious damage to ensued] [whereby loss of life ensued] and to investigate the cause of such [wreck, &c.] and to inquire into the conduct of the master or masters, &c., as in above paragraph.]

([a]) Name of officer convening Court. ([b]) Rank.

([c]) Name of Foreign Station.

([d]) Here state where the Court is to assemble " British [Vice] Consulate [General] at ," " on board H.M.S. ' , lying in the port of " or " anchored off ."

C [investigate the charge brought against A. B., ordinary seaman of the British schooner *Mary Ann*, of Shields, Official Number , of having murdered C. D., seaman belonging to the said ship on the high seas, on or about the day of , 18 , last past, and generally to inquire into the circumstances attending the death of the said C. D.

To be used in cases under s. 268 of the Merchant Shipping Act, 1854.

D [investigate the following complaint made by the [master], [certificated mate], [A. B. and C. D. seamen] belonging to the British [sailing ship] [steamship] , viz., that E. F. [a seaman] belonging to the said ship [here state the complaint and if it constitute a statutory offence intended to be tried under the powers of 18 & 19 Vict., c. 91, s. 18, follow the words of the statute, *e.g.*, "is guilty of continued wilful disobedience to lawful commands" or "continued wilful neglect of duty," or otherwise, as the case may be.]

To be used when a complaint is made under sub-sec. 1 of s. 260 of the Merchant Shipping Act, 1854.

E [investigate the circumstances under which A. B., a seaman of the British, &c., was left behind and discharged at by the master C. D. [or as the case may be].

To be used in cases under sub-sec. 2 of s. 260 of the Merchant Shipping Act, 1854.

F [investigate the following complaint (a) made by the [certificated mate], [A. B. and C. D. seamen] belonging to the British [sailing ship] [steamship] , viz., that E. F., the [master] of the said ship was on the day of guilty of a gross act of [misconduct], [drunkenness], [tyranny] in [describe the circumstances].

To be used when the Investigation is in respect of a gross act of misconduct, drunkenness, or tyranny on the part of a master (b).

And I hereby nominate and appoint the undermentioned persons to be members of the said Court, that is to say,

(c) } *Members.*

Given under my hand, on board H.B.M. ship , at , on this day of , 18

(d).

(a) When this form is used the master must, in order that the Court may be able to deal with his certificate, be furnished before the commencement of the Investigation with a copy of the report, or a statement of the case upon which the Investigation was ordered, 25 & 26 Vict., c. 63, s. 23, sub-sec. 6, and see pages 163, 170, 173.

(b) See as to these offences and their punishment by supersession of the master, page 169.

(c) Here insert names and descriptions of members. The President is the Naval or Consular Officer of highest rank, *e.g.* , Esq., , in H. M. Navy. , Esq., H.B.M. Consul at or British Vice-Consul at , British Merchant at , Master of the British Merchant ship , of , Official Number .

(d) Signature of Summoning Officer.

FORM B 2.

SUMMONS OF CONSULAR OFFICER CONVENING A NAVAL COURT.

Annex No. .

By (a) Esquire, Her Britannic Majesty's Consul for (b) [or British Vice-Consul at] in the absence of any officer in command of any ship of Her Majesty on this Foreign Station.

In pursuance of the powers contained in sec. 260 of 17 & 18 Vict., c. 104, cited as "The Merchant Shipping Act, 1854," I hereby summon a Naval Court to assemble at (c) on the day of 18 , at o'clock in the noon, to (d)

And I hereby nominate and appoint the under-mentioned persons to be members of the said Court, that is to say

(e) } *Members.*

Given under my hand and seal of office at the British [Vice] Consulate [General] at on this day of one thousand eight hundred and eighty .

(f)

FORM C.

NOTICE OR SUMMONS TO A PARTY (g).

Annex No. .

To (h) of

"The Merchant Shipping Acts 1854 to 1882."

Take Notice, that under and by virtue of the above Acts or some of them a Naval Court has been ordered to assemble at (i)

(a) Name of officer convening Court.

(b) District of Consul or Consul-General, or place of residence of Vice-Consul.

(c) Here state where Court is to assemble "British [Vice] Consulate [General] at ," or as the case may be.

(d) Here insert purpose for which Court was summoned as in Form B 1.

(e) Here insert names and descriptions of members as in Form B 1.

(f) Signature of summoning officer.

(g) See statutory provisions as to mode of service pp. 108 & 109.

(h) Here describe party, *e.g.*, "N. N., seaman of the British brig '*Mary Ann*' of Shields, Official Number 100."

(i) Here describe precisely the place of meeting *e.g.*, "at the British [Vice] Consulate [General] at ," "on board H.M.S. ' ' now anchored off ," or as the case may be.

on the day of 188 . at the hour of in the noon to investigate the (a)

These are therefore to require you to be and appear at and before the said Naval Court at the time and place above-mentioned in order that you may take part in the hearing and investigation.

Should you desire any person or persons to be summoned as witnesses you must notify to us their names and addresses.

Given under my hand at on this day of 188 .

(b)

FORM D.

SUMMONS TO A WITNESS (c).

To (d)

"THE MERCHANT SHIPPING ACTS, 1854 TO 1882."

WHEREAS a Naval Court has been duly convened to assemble at (e) for the purpose of (f) and it appears that you are likely to be able to give material evidence to the said Court.

These are, therefore, to summon you and every of you to be and appear at and before the said Naval Court on the day of 18 , at o'clock in the noon, to testify what you shall know concerning the matter aforesaid (g).

Given under my hand on this day of 18 .

(h)

(a) State the purpose for which Court is summoned from summons convening it.

(b) Signature of Naval Officer convening, or President of Court, or of Consular Officer with title and seal.

(c) *See* statutory provisions as to mode of service, pp. 108 and 109, and further as to summoning witnesses, p. 167.

(d) Give name and full description of witness.

(e) Here describe precisely the place of meeting, *e.g.*, "At the British [Vice] Consulate [General] at ," "on board H.M.S. ' ,' now anchored off ," or as the case may be.

(f) Here state shortly the purpose for which Court is convened as given in Summons convening Court, and if a person is to be tried for an offence under 18 & 19 Vict., c. 91, s. 18, state that the person is to be tried and the offence in the words of the Merchant Shipping Act which defines it.

(g) Add when necessary "and to bring there and then, and produce to the Court the following documents in your possession," [describe them] "and any other document in your possession, custody, or control relating to the matters aforesaid."

(h) Signature of Naval Officer convening, or President of Court, or of Consular Officer with title and seal.

FORM E.

HEADING AND TERMINATION FOR DEPOSITIONS (a) BEFORE NAVAL COURTS WHERE NO INTERPRETER IS REQUIRED.

Annex No. .

"THE MERCHANT SHIPPING ACT, 1854 TO 1882."

AT a Naval Court held at (b) on the (c) day of 188 , (d) being called (e) sworn and examined (f) deposed as follows:—

[*Here give the evidence of the witness in a narrative form, and recording the exact terms of any particular question and answer if deemed desirable. When his statement is concluded, if he is questioned by the Court, or other party, the evidence then given should be preceded by the words "in answer to the Court," "in answer to the accused," "in answer to the prosecutor," or as the case may be.*]

(g)

I hereby certify that the foregoing is the evidence of (h) taken before the Court as above described [in criminal cases add "and in the presence of the accused N. N."] and duly signed by the said witness.

Before me (i)

President of Naval Court.

(a) It is important to observe the prescribed form of heading and attestation to depositions of witnesses.

(b) Name of place.

(c) This date should be that of the day on which the witness is examined, and not necessarily the first day of the Court's meeting.

(d) Here insert the name of witness in full and description, *e.g.*, "N. N., Master of the British brig *Mary Ann*, of Shields, Official Number 100," or as the case may be.

(e) Here, if necessary, may be inserted "for the prosecution," or "for the defence."

(f) In cases where the witness is permitted by law to make an affirmation or declaration, omit the words "sworn and examined," and insert in lieu thereof, "having duly made an affirmation [or declaration] according to law."

(g) The witness must sign at the end of his deposition.

(h) Insert name of witness.

(i) Signature of President of Court with his official title, and if a Consular Officer his official seal.

FORM F.

HEADING AND TERMINATION FOR DEPOSITIONS BEFORE NAVAL COURTS WHEN THE WITNESS IS UNACQUAINTED WITH ENGLISH AND AN INTERPRETER IS EMPLOYED.

Annex No.

"THE MERCHANT SHIPPING ACTS, 1854 TO 1882."

AT a Naval Court held at (a) on the (b) day of 188 , (c) being called (d) , and it appearing that he was unacquainted with English, (e) was sworn to interpret truly and correctly; the witness was then also duly sworn (f) and examined through the interpreter, when he deposed as follows:—

[*Here give the Evidence, as mentioned in Form E* (g)].

I certify that the foregoing is the evidence of the witness (h), taken before this Court as above described by the aid of the interpreter (e)

[*in criminal cases* add "and in the presence of the accused N. N."] and duly signed by the said interpreter [and witness];

Before me,

(i)

President of Naval Court.

(a) Name of place.

(b) This date should be that of the day on which the witness is examined, and not necessarily the first day of the Court's meeting.

(c) Here insert the name of witness in full, and description, *e.g.*, "N. N. Master of the British brig *Mary Ann*, of Shields, Official Number 100," or as the case may be.

(d) Here, if necessary, may be inserted "for the prosecution," or "for the defence."

(e) Insert name of Interpreter.

(f) If witness was not sworn for any reason, the words "sworn and examined" are to be altered, as in note (e) to Form E.

(g) The Interpreter must sign at the end, and the witness may sign also, but this is not essential.

(h) Name of witness.

(i) Signature of President of Court with his official title, and if a Consular Officer his official seal.

FORM G.

HEADING AND TERMINATION FOR DEPOSITIONS BEFORE NAVAL COURTS WHEN ACCUSED IS UNACQUAINTED WITH ENGLISH, AND AN INTERPRETER IS REQUIRED TO INTERPRET THE EVIDENCE TO HIM.

Annex No. .

"THE MERCHANT SHIPPING ACTS, 1854 TO 1882."

AT a Naval Court, held, &c. [for the heading and body of the deposition see Form E.]

(a)

I (b) do declare that I truly and correctly translated to the accused (c) in (d) the above evidence, as also the questions but to the above-named witness, and his replies.

(e)

I hereby certify that the foregoing is the evidence of (f) taken before the Court as above described in the presence of the accused (c) to whom it was duly interpreted by (b) duly sworn to interpret duly, and truly signed by the said witness and interpreter;

Before me,

(g)

President of Naval Court.

(a) Signature of witness at end.
(b) Insert name and description of Interpreter.
(c) Name of accused.
(d) Language with which accused is acquainted.
(e) Signature of Interpreter.
(f) Name of witness.
(g) Signature of President of Court, with his official title, and if a Consular Officer, his Official Seal.

FORM H.

FORM FOR ADMINISTERING OATH OR AFFIRMATION.

Witness's Oath.

(a)

You do swear that the evidence which you shall give before this Court shall be the truth, the whole truth, and nothing but the truth. So help you God.

Witness's Affirmation (b).

(a)

You do solemnly, sincerely, and truly affirm and declare that the evidence which you shall give before this Court shall be the truth, the whole truth, and nothing but the truth (and the witness shall answer, I do.)

Interpreter's Oath.

(c)

You do swear that you will rightly and faithfully, and to the best of your ability, interpret the oath or oaths, affirmation or affirmations, which shall be administered to each and every witness produced and examined before this Court, and also all statements, questions by or to the witnesses, and their evidence, and other matters which you shall be required to do by this Court. So help you God.

(a) Repeat name of witness.

(b) Affirmations in lieu of oaths are permitted in any Court of Civil Judicature or in any Court of Criminal Jurisdiction, or in the course of any criminal proceeding, by any persons conscientiously objecting to take an oath, if the Court or judge, or other presiding officer is satisfied of the sincerity of such objection. In that case the above form of affirmation should be prefaced with the words following, viz:—"You do solemnly, sincerely, and truly affirm and declare that the taking of any oath is, according to your religious belief, unlawful, and you do also" [as in form above given] 17 & 18 Vict., c. 125, s. 20; 24 & 25 Vict., c. 66, s. 1. In any Court of Justice a person objecting to or objected to as incompetent to take an oath shall, if the presiding judge is satisfied that the taking of an oath would have no binding effect on his conscience make a promise and declaration in the following form:—"I solemnly promise and declare that the evidence given by me to the Court shall be the truth, the whole truth, and nothing but the truth." 32 & 33 Vict., c. 68, s. 4. The words "Court of Justice" and the words "presiding judge" in the above enactment shall be deemed to include any person or persons having by law authority to administer an oath for the taking of evidence. 33 & 34 Vict., c. 49, s. 1.

(c) Repeat name of interpreter.

FORM I.

EXPENSES OF NAVAL COURT [a].

Annex No. .

"THE MERCHANT SHIPPING ACTS, 1854 TO 1882."

Account of the expenses of a Naval Court held at [b] on the day [c] of 188 , to inquire into [d]

	£	s.	d. currency.
To Mr. , British merchant, a member of the Court, days' attendance, at £ ...			
To Mr. , Master of the , a member of the Court, days' attendance at £			
To , for acting as interpreter for days' attendance			
To , for his service as expert witness ( ) days' attendance			
To Mr. , Clerk of the Court days' attendance, at £			
To , for acting as provost marshall days' attendance, at 5s.			
For petty expenses, serving notices, boat hire (as the case may be)			
To , for services of a policeman for days			
To stationery			
Total £			

Dated at this day of 18 .

Approved by the Court

(Signature.)

President of Naval Court.

We, the undersigned, do acknowledge to have received the amounts placed against our respective names in the above account.

(Signatures of recipients.)

Received the amonnt stated for stationery, and I certify that no receipt is procurable for the sums paid for petty expenses.

(Signature of President, or of Clerk of Court.)

(a) To avoid liability to disallowance by the Board of Trade this account should be drawn up and signed before delivering the finding or order of the Court. *See* Form K, p. .

(b) Name of place. (c) Or days.

(d) Here state cause for which Court was ordered as given in summons convening the Court.

FORM K.

FINDING AND ORDER OF A NAVAL COURT.

Finding and Order of a Naval Court held at ([a]) , on the day of , 188 , to investigate ([b]).

NOTE.—*The following paragraphs are added by way of suggestion to be adapted to the circumstances of each case.*

[*In cases of shipping casualty.*]

The was a vessel rigged of tons registered tonnage, Official Number , built at in 18 , and belonging to the port of . It appears from the evidence given before this Court that she sailed from , on or about the , bound for , with a cargo of and a crew of hands, all told, as well as passengers.

[*Here give a narrative of the voyage so framed as to elucidate the subsequent findings and order of the Court*] ([c]).

The Court having regard to the circumstances above stated, finds as follows:—

( ) That the master was in error in ([d]).

( ) That the master was guilty of a wrongful [act] or [default] ([e]), causing [or contributing] to the ([f]) , in [approaching too near to the land when], [not altering his course when], [leaving the deck at a time when the safety of the ship required his personal supervision], or as the case may be.

( ) That the master appears to have navigated his vessel in a seamanlike and proper manner, and, when a casualty was inevitable, to have done everything in his power to avert .

( ) That the Court sees no grounds for blaming the conduct of after the .

([a]) Place.

([b]) Here state cause for which Court was ordered as in summons convening the Court.

([c]) See *ante*, p. 177, as to this narrative.

([d]) The next paragraph should be substituted for this, when the error in question forms the only foundation for a subsequent order to cancel or suspend the master's certificate.

([e]) As to what constitutes a wrongful act or default within the meaning of the statute, see *ante*, p. 89 *et seq.*, and Appeals, p. 194, *et seq.*

([f]) State the casualty in the words of sub-section 2 of sec. 242 of "The Merchant Shipping Act, 1854," or ["loss of life"] as the case may be.

( ) That , who holds a certificate as and who was on watch at the time of the in , was guilty of a wrongful [act] or [default] in [appears to the Court to have given the proper directions, and deserves praise for the manner in which he performed his duty].

( ) The Court desires to place on record its high opinion of the gallant conduct [able management] [skilful navigation] of [or as the case may be].

( ) That the crew appear to have conducted themselves properly and used their utmost exertions to [or as the case may be].

( ) That proper discipline appears to have been maintained on board the , and the Court considers that the conduct of is specially worthy of notice, since it appears that [give reason for remark].

( ) That, upon the evidence given, the vessel appears to have been well found, sufficiently manned, and seaworthy at the time of her departure from ; [or] "that she was, &c., with the exception that ."

( ) That her cargo of appears to have been well and properly stowed (a) and sufficient dunnage used [or as the case may be].

( ) That she had [no] deck cargo [but it was].

( ) That she was [not] overloaded. [If she was overloaded the matter must be fully stated, and the finding of the Court explained.]

( ) That the log-book has been well kept [or as the case may be] by the .

( ) That the appears to have been properly supplied with charts.

( ) That the was not supplied with recent [accurate] charts.

( ) That the was not, in the opinion of the Court, provided with proper charts for the voyage on which she was engaged [state fully reason for this remark, and what charts she had].

( ) That the Court desires especially to direct the attention of the Board of Trade to the fact that [here insert any matter of opinion which the Court considers should be brought to the special notice of the Board of Trade].

[Then follow any further remarks the Court may wish to make before stating the order to be made.]

(a) If a grain cargo shipped at a port within the limits of the Grain Cargoes Act, 1880 [*see* page 285] add, "in accordance with the provisions of 'The Grain Cargoes Act, 1880,'" or, "in accordance with the prescribed rules," as the case may be.

[*The following paragraphs are added by way of suggestion for use in cases of crimes, misdemeanours, or offences against the Merchant Shipping Acts.*]

EXAMPLE 1.—That having heard and carefully considered the evidence given before this Court in the presence of the [accused] [said] as also his statement in defence, and having taken into consideration his plea of [and having due regard to the fact that] THE COURT FINDS .

EXAMPLE 2.—That [a charge having been brought before the Court] [a complaint having been made to the Court] by (a) that A.B. [the master] [a seaman] [an apprentice] [belonging to the British ship] [who had within three months previously been employed in the British ship] had committed an offence upon the high seas [or at some place abroad, naming it] to wit, that he had [describe the offence against property, or person, or otherwise, and if possible in the words of the statute constituting the offence] the Court has inquired into the case upon oath and finds that it is necessary to [place the said under restraint and to] send him to the United Kingdom [or if a British possession, naming it] for the trial of the said offence.

EXAMPLE 3.—That having heard and carefully considered the evidence given before this Court touching the circumstances under which [the seaman was left behind at , or whatever the case may be] and having duly considered the explanation of the circumstances given by THE COURT FINDS

( ) That is guilty of (b)

( ) That is not guilty of (b)

( ) That has failed to substantiate the charges of (b) brought by him against

( ) That has not only failed to substantiate the charges of (b) brought by him against but the Court considers [them to be vexatious and without foundation] [the complaint most frivolous] [there was just cause for an inquiry] [or as the case may be].

That the Court considers that met his death from accidental causes; and [as the case may be].

( ) That the evidence touching the death of is unsatisfactory and meagre, that the deceased appears to have but that there is no evidence to [warrant the suspicion that he was murdered] [warrant the suspicion of foul play which has been cast on].

(a) Describe the complainant in the language of sub-sec. 1 of sec. 260, Merchant Shipping Act, 1854.

(b) Describe the charge in the words of the statute as in the summons.

( ) That gave his evidence in a most unsatisfactory manner.

( ) That is fully acquitted of the charge of (a) [brought against him by].

( ) That the evidence tends to show that the discipline on board the was and that is greatly to blame for [state cause].

[*Suspension or Cancellation of Certificates.*]

THE COURT in pursuance of the powers vested in it by Section 23 of 25 & 26 Vict., c. 63 [or as the case may be] therefore ORDERS:—

That, a copy of the Report, or a statement of the case upon which the investigation was ordered having been furnished to before the commencement of the investigation his certificate of as [master] [mate] [engineer] No. issued by the [Board of Trade] [Governor or Administrator of as the case may be] and dated be for the wrongful [act] or [default] aforesaid [suspended for the period of calendar months from this day] [cancelled].

[*Superseding Master.*]

[The Court being unanimous that the safety of the ship [or crew], [or the interest of the owners] absolutely requires it, orders that be superseded as master of the said ship], [and that a copy of the report or a statement of the case upon which the investigation was ordered having been furnished to the said before the commencement of the investigation, his certificate of No. issued by the, &c. [as above, omitting the reference to wrongful act or default], be suspended for the period of calendar months from this day] [cancelled] (b).

[*Appointment of new master.*]

And that with the consent of the consignee of the said ship [or the consignee of the said ship not being at the place as the case may be], be appointed to act in the stead of as master thereof.

[*Censure.*]

That be and he is hereby severely [censured], [reprimanded], for [state the cause].

In setting forth the remaining powers exercised by the Court and combinations of those powers where such can be made, the words of

---

(a) Describe the charge in the words of the statute as in the summons.

(b) The latter portion of this finding to be adopted when the Court determines to deal with the master's certificate as well as to supersede him, *see* p. 169.

the Act must in every case be carefully followed. The following are examples of the orders which may be so made.

[*Discharge of seaman and forfeiture of wages.*]

That, in accordance with the powers contained in sec. 263 of 17 & 18 Vict., c. 104, be discharged from his ship the of and the balance of wages due to him fixed by the Court at £ be [forfeited and paid into the receipt of Her Majesty's Exchequer], [retained by way of compensation to the owner.]

[*Discharge of seamen and settlement of wages.*]

That, in accordance with the powers contained in sec. 263 of 17 & 18 Vict., c. 104, the seaman be discharged from his ship the of and the balance of wages due to him is fixed by this Court at £ .

[*Order as to cost of imprisonment abroad.*]

That, in accordance with the powers contained in sec. 263 of 17 & 18 Vict., c. 104, the costs incurred by the [master] [owner] of the in procuring the imprisonment of [seaman] [apprentice] at [foreign port] and his maintenance whilst so imprisoned, be paid out of and deducted from his wages, whether already earned or hereafter to be earned.

[*Payment of costs.*]

That, in accordance with the powers contained in sec. 263 of 17 & 18 Vict., c. 104 [the costs] [one-half the costs] [the sum of £ being a portion of the costs] of the proceedings before the said Court be paid by being one of the parties thereto, and he is hereby ordered to pay the said amount accordingly.

[*Payment of costs.*]

That, in accordance with the powers contained in sec. 263 of 17 & 18 Vict., c. 104 [the costs] [one-half the costs] [the sum of £ , being a portion of the costs] of the proceedings before the said Court be paid by the master of the one of the parties thereto, and he is hereby ordered to pay the said amount accordingly, but that he be and is hereby empowered to deduct the same from the wages of .

[*Payment of Compensation.*]

That, in accordance with the powers contained in sec. 263 of 17 & 18 Vict., c. 104, for having made a vexatious [frivolous] complaint be, and is hereby ordered to pay to the sum of £ , being compensation for [loss] [delay] occasioned thereby.

[*Discharge of Seamen and order to be sent for trial.*]

That, in accordance with the powers contained in sec. 263 of 17 & 18 Vict., c. 104, be discharged from his ship the

, that the sum of £ , being [a portion of] the costs of the proceedings before the said Court, be paid by the said , being one of the parties thereto and be deducted from his wages, and that the balance of his wages, if any, be forfeited and be paid into the receipt of Her Majesty's Exchequer. And further that the said be sent to the United Kingdom [or a British possession, naming it] there to be tried for , that he (a) be [retained in prison until the , due on the shall leave for] or other opportunity, approved by H.M. Consul, shall occur for sending him to the United Kingdom [or if a British possession, naming it] as a prisoner.

[*Seaman Discharged and ordered to be sent as Witness.*]

That be discharged from his ship, the as from the day of , that his wages be paid to him [up to that date], and that he be sent to [the United Kingdom] [or a British possession, naming it] as a witness to give evidence in the proceedings to be there taken against the said for the offence aforesaid.

[*Sentence of Imprisonment, and Fine.*]

That, in accordance with the powers contained in sec. 243 of 17 & 18 Vict., c. 104, the accused be imprisoned [and kept to hard labour] for the period of weeks from this date [and that he forfeit out of his wages days' pay, that is to say, the sum of £] [and that he forfeit out of his wages the sum of £ , being the expenses which have been properly incurred by the master of the said ship in hiring a substitute.]

[*Sentence of Fine.*]

That, in accordance with the powers contained in sec. 243 of 17 & 18 Vict., c. 104, the seaman do forfeit out of his wages days' pay, that is to say, the sum of £ .

[*Seaman Fined as Compensation for Loss with Sentence of Imprisonment.*]

That, in accordance with the powers contained in sec. 243 of 17 & 17 Vict., c. 104, the seaman do forfeit out of his wages the sum of £ , being equal to the amount of the loss sustained by the [wilful damage] [embezzlement], by the

---

(a) Here describe the steps in the power of the Court for the purpose of placing the offender under necessary restraint, and of sending him as soon as practicable in safe custody to the United Kingdom or to a British possession in which there is a Court capable of taking cognizance of the offence. See sub-sec. 1 of sec. 268, Merchant Shipping Act, 1854.

said of the [cargo] [stores] of the ship , [and that the said be imprisoned and kept to hard labour for the period of weeks from this date.]

[*Approving Wages Account.*]

The wages account of having been examined by this Court, the balance due to him is fixed at £ .

[*Approving Expenses.*]

The expenses of this Court, fixed at £ are approved.

Dated at this day of , 18 .

(a)

President of Naval Court.

(b) } *Members.*

FORM L.

ORDER FOR CONVEYANCE OF A PRISONER (c).

To master of the of Official Number

Pursuant to the Act 17 & 18 Vict., c. 104, s. 268 (d), you are hereby required to receive on board your vessel and convey to as a prisoner late seaman of the

---

(a) Signature of President with official title, and if a Consular Officer his official seal.

(b) Signature of members of Court with title or description, *e.g.*,

. H.M. Consul [General] at .

. British Vice-Consul at .

. Lieutenant R.N., H.M.S. " ," at .

. Master of British

of

. British merchant at .

(c) This should, if possible, be served personally upon the master of the ship to whom it is addressed, by delivering a copy thereof to him, but it may also be served by leaving a copy for the master on board the ship with the person being or appearing to be in command or charge of such ship. 39 & 40 Vict., c. 80, s. 35. See page 109.

(d) The power of a Naval Court to make the order for conveyance under this section is conferred by sec. 263, sub-sec. 6, of the Merchant Shipping Act, 1854. See page 160.

British ship of Official Number , who was ordered by a Naval Court [a] convened by [following summons convening] and held at on the [day] [days] of [instant] [last past] to be sent to [b] to be there tried for [state clearly the crime for which he is to be tried].

You will afford the prisoner a passage and subsistence during the voyage, and on your arrival you will deliver the said into the custody of some police officer or constable who shall take him before a justice of the peace or other magistrate by law empowered to deal with the matter. You will also receive and convey to aforesaid the seamen whom the Court ordered to be sent home as witnesses, and afford them a passage and subsistence during the voyage [c].

Given under hand and Seal [at the British [Vice] Consulate [General] on this day of 18 .

[Signature and title of Consular officer, or of three members of the Court and description.] [Seal.]

FORM M.

EXPENSES INCURRED FOR A PRISONER SENT FOR TRIAL [d].

Expenses incurred by H.M. Consul at on behalf of , a seaman of the British , of Official Number , sent to , as a prisoner for trial by order of a Naval Court held at the , at , on , day of , 188 .

---

[a] Depositions should in every case be taken whether a Naval Court is held or not, and should be sent forthwith to the Board of Trade or to the Governor of the British possession, as the case may be. In the latter case, if a Naval Court has been held the Report to the Board of Trade must be accompanied by certified copies of the depositions.

[b] United Kingdom or British possession.

[c] If possible the fact of the prisoner and witnesses having been so placed on board a vessel should be noted on the ship's articles.

[d] This account must be at once forwarded to the Board of Trade or to the Governor of the British possession, as the case may be.

	£	s.	d.	Currency.
Expenses of Naval Court				
Prison and police expenses				
Subsistence whilst at police-station ...				
Boat taking him on board the ,				
for conveyance to				
Subsistence of witness for				
days				
Total ... ... £				

Dated at this day of 188 .

[Signature of Consular Officer.]

FORM N.

18 AND 19 VICT., CAP. 91, SEC. 18.

FORM OF SUMMONS TO MASTER OR MEMBER OF CREW FOR AN OFFENCE (a).

WHEREAS I, the undersigned [President of the Naval Court, summoned by the order of (b)] [having summoned a Naval Court to be held] for the purpose of (b)

A.—[And whereas you are accused of the offence of being]

B.—[And whereas the offence of which you are so accused as aforesaid is (c)]

[an offence against the Merchant Shipping Act, 1854, in respect of which two Justices would, if the case were tried in the United Kingdom, have power to convict summarily. These are therefore to command you to be and appear on , at o'clock in the noon, at , before the said Court to answer to the said accusation, and to be further dealt with according to law.

Given under my hand this day of , in the year of our Lord, One thousand eight hundred and eighty at

[Signed by the President of the Naval Court or by the Officer by whom the Naval Court has been summoned.]

(a) See statutory provisions as to mode of service, pp. 108 and 109.

(b) Here state fully from convening summons showing that the Court was summoned to hear a complaint touching the conduct of the master or any of the crew of the ship. See sec. 18, of 18 & 19 Vict., c. 91.

(c) Paragraph B. is to be substituted for paragraph A. when the only complaint touching conduct which the Court is summoned to hear is that of an offence against the Merchant Shipping Act, 1854, to be tried under the powers of 18 & 19 Vict., c. 91, s. 18.

FORM O.

18 AND 19 VICT., CAP. 91, SEC. 18.

FORM OF CONVICTION OF MASTER OR MEMBER OF THE CREW FOR AN OFFENCE.

[WHEREAS a Naval Court (of which were members), was summoned by (a) for the purpose of (b) that is to say, for the hearing of a complaint touching the conduct of the master (c) [and or (c) members of the crew] of the ship.

A.—[And whereas the said , was accused of the offence of being]

B.—[And whereas the offence of which the said was so accused as aforesaid, is (d)] an offence against the Merchant Shipping Act, 1854, in respect of which two Justices would, if the case were tried in the United Kingdom, have power to convict summarily. And whereas the said Court having caused the said to be summoned before it, and the said having appeared [or, the said having voluntarily appeared before the said Court] and the said Court having heard evidence in relation to the offence aforesaid, and having heard what the said had to say in his defence adjudged the said to be guilty of the offence of (e) and adjudged that the said {do / be} (f)

Given under our hands and seals this day of in the year of our Lord One thousand eight hundred and eighty , at

[*Here follow the seals and signatures of at least three members of the Court, of whom, if possible, one should be an Officer in the Naval Service, not below the rank of Lieutenant, one a Consular Officer, and one a Master of a British Merchant Ship.*]

(a) Name and description of convening officer.

(b) Purpose for which the Court was convened fully from the convening summons.

(c) Insert name of master {and / or} crew.

(d) Paragraph B. is to be substituted for paragraph A. when the only complaint touching conduct, which the Court was summoned to hear was that of an offence against the Merchant Shipping Act, 1854, and was tried under the powers of 18 & 19 Vict., c. 91, s. 18.

(e) The offence must be accurately described so as to bring it within the statute and show jurisdiction in the Court.

(f) Punishment.

If the sentence be imprisonment, add the following words :
"The above sentence is hereby confirmed by me being (a)
"and the place of
"imprisonment above named is approved by me as a proper place
"for the purpose.

"As witness my hand this day of , in the
"year of our Lord One thousand eight hundred and eighty
"at ."

[Signed by the above Officer.]

If the accused be acquitted the above form may be used substituting the necessary words in the adjudication therein. No confirmation will be required in such case.

(a) Senior Naval or Consular Officer present at the place where the Court is held.

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